

BEFORE THE MONTGOMERY COUNTY  
BOARD OF APPEALS

Office of Zoning and Administrative Hearings  
Stella B. Werner Council Office Building  
Rockville, Maryland 20850  
(240) 777-6660

IN THE MATTER OF:  
PETITION OF TOURNAMENT PLAYERS CLUB  
AT AVENEL, INC.,

Petitioner

Richard Brogan  
Michael Cornelius  
Dennis R. Ingram  
Ward Oberholtzer  
Michael Snyder  
James Triola

For the Petition

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Board of Appeals Case No. S-914-C  
(OZAH Referral No. 05-12)

\* \* \* \* \*

Emil Beran  
John W. Dix  
Charles Doran

Community Participants Neither in  
Support Nor in Opposition

\* \* \* \* \*

Before: Françoise M. Carrier, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

**TABLE OF CONTENTS****Page No.**

<b>I. STATEMENT OF THE CASE .....</b>	<b>3</b>
<b>II. BACKGROUND .....</b>	<b>4</b>
<b>A. The Subject Property and Neighborhood .....</b>	<b>5</b>
<b>B. Land Use History .....</b>	<b>8</b>
<b>C. Master Plan .....</b>	<b>9</b>
<b>D. Proposed Modification .....</b>	<b>10</b>
<b>E. Timing and Phasing .....</b>	<b>39</b>
<b>F. Forest Conservation .....</b>	<b>39</b>
<b>G. Traffic and Parking .....</b>	<b>42</b>
<b>H. Construction Access and Staging .....</b>	<b>44</b>
<b>I. Community Participation .....</b>	<b>45</b>
<b>III. SUMMARY OF HEARING .....</b>	<b>49</b>
<b>A. Applicant's Case in Chief .....</b>	<b>49</b>
<b>B. Community Participation .....</b>	<b>70</b>
<b>C. Rebuttal .....</b>	<b>73</b>
<b>IV. CONCLUSIONS .....</b>	<b>73</b>
<b>A. Standard for Evaluation .....</b>	<b>74</b>
<b>B. Specific Standards .....</b>	<b>79</b>
<b>C. General Standards .....</b>	<b>81</b>
<b>V. RECOMMENDATIONS .....</b>	<b>85</b>

## I. STATEMENT OF THE CASE

Petition S-914-C, filed December 22, 2005, seeks to modify an existing special exception for a private golf club, the Avenel Golf Club (“Avenel” or the “golf club”), located at 10000 Oaklyn Drive in Potomac, Maryland, on property identified as Part of Parcel A, Parcel B and Parcel C, Block J, Avenel Subdivision, and Part of Parcel A, Block K, Avenel Subdivision, Tax Account Numbers 10-02745470, 10-02745561, and 10-02745572. The Petitioner, Tournament Players Club at Avenel, Inc. (“TPC at Avenel, Inc.”) seeks approval to completely renovate the golf course, including redesigning some holes to make them more competitive, replacing all of the turf, and carrying out stream restoration work to control flooding problems. The modification also includes a complete interior and exterior renovation of the clubhouse, a modest expansion of its size, minor changes in the hours of operation, and more time for the preparation, operation and clean-up of an annual golf tournament on the site that is sanctioned or operated by the PGA TOUR (the “PGA TOUR Event”). The original construction of the golf course was carried out pursuant to a subdivision and site plan approved by the Planning Board. Accordingly, if the Board of Appeals approves the modification, the Petitioner will also need to obtain Planning Board approval for a revision to its site plan, before the renovation can proceed.

On January 27, 2006, the Board of Appeals (“Board”) scheduled a public hearing in this matter for April 21, 2006, to be conducted by a hearing examiner in the Office of Zoning and Administrative Hearings. The hearing was postponed three times at Petitioner’s request, the last time to allow for discussions with community members. Technical Staff of the Maryland-National Capital Park & Planning Commission (“M-NCPPC”) reviewed the modification petition and, in a report dated September 25, 2006, recommended *approval* with conditions. See Ex. 27. Staff also provided supplemental information via email on October 12 and October 18, 2006, and via two supporting memoranda dated September 22, 2006. See Exhibits 41, 45, 56, 57 and 58. The Montgomery County Planning Board (“Planning Board”) reviewed this petition at its regular meeting on October 5, 2006, and voted 4 to 0 to recommend *approval* with conditions similar to those recommended by Technical Staff. See Ex. 35. Following the OZAH hearing, Technical Staff provided additional comments, via email dated November 20, 2006, on certain revisions to the Petitioner’s proposal. See Ex. 105.

The hearing was convened on November 6, 2006, after proper notice, and concluded on November 8, 2006. Testimony and other evidence were received in favor of the proposed modification. Additional testimony and evidence were received from community members who raised concerns about particular aspects of the modification, but did not express outright opposition to granting the modification. The file also contains letters that reflect these and other concerns, as well as letters in support of the modification. The file was held open briefly to accept additional submissions from the Petitioner and allow for public comment, and closed on December 5, 2006. It was reopened on January 4, 2007 to admit corrected versions of several site plan documents, as detailed on page 18, note 1, and closed immediately.

Petitions to modify the terms or conditions of a special exception are authorized by §59-G-1.3(c) of the Zoning Ordinance. Section 59-G-1.3(c)(4) states:

The public hearing must be limited to consideration of the proposed modifications noted in the Board's notice of public hearing and to (1) discussion of those aspects of the special exception use that are directly related to those proposals, and (2) as limited by paragraph (a) below, the underlying special exception, if the modification proposes an expansion of the total floor area of all structures or buildings by more than 25%, or 7,500 square feet, whichever is less.

(A) After the close of the record of the proceedings, the Board must make a determination on the issues presented. The Board may reaffirm, amend, add to, delete or modify the existing terms of the special exception. The Board may require the underlying special exception to be brought into compliance with the general landscape, streetscape, pedestrian circulation, noise and screening requirements of 59-G-1.26, if (1) the proposed modification expands the total floor area of all structures or buildings by more than 25 percent, or 7,500 square feet, whichever is less, and (2) the expansion, when considered in combination with the underlying special exception, changes the nature or character of the special exception to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected.

In the present case, the only structure that would be enlarged in connection with the proposed modification is the clubhouse, which would increase by 3,600 square feet, or about 11 percent. Accordingly, this report and recommendation address only the requested modifications.

## **II. BACKGROUND**

For the convenience of the reader, background information is grouped by subject matter.



### ***A. The Subject Property and Neighborhood***

The special exception site (the “subject property”) consists of several parcels comprising approximately 260 acres of land located at 10,000 Oaklyn Drive in Potomac, known as Part of Parcel A, Parcel B and Parcel C in Block J of the Avenel Subdivision, and portions of Parcel A in Block K of the Avenel Subdivision. The Petitioner owns approximately 228 acres of the site. The remainder, consisting of portions of Parcel A in Block K, is owned by the Washington Suburban Sanitary Commission (“WSSC”) and is used as part of the golf course via an easement agreement and a parking agreement between TPC at Avenel, Inc. and WSSC, both dated December 29, 1988. See Ex. 13. The entire site is classified under the RE-2C/TDR Zone.

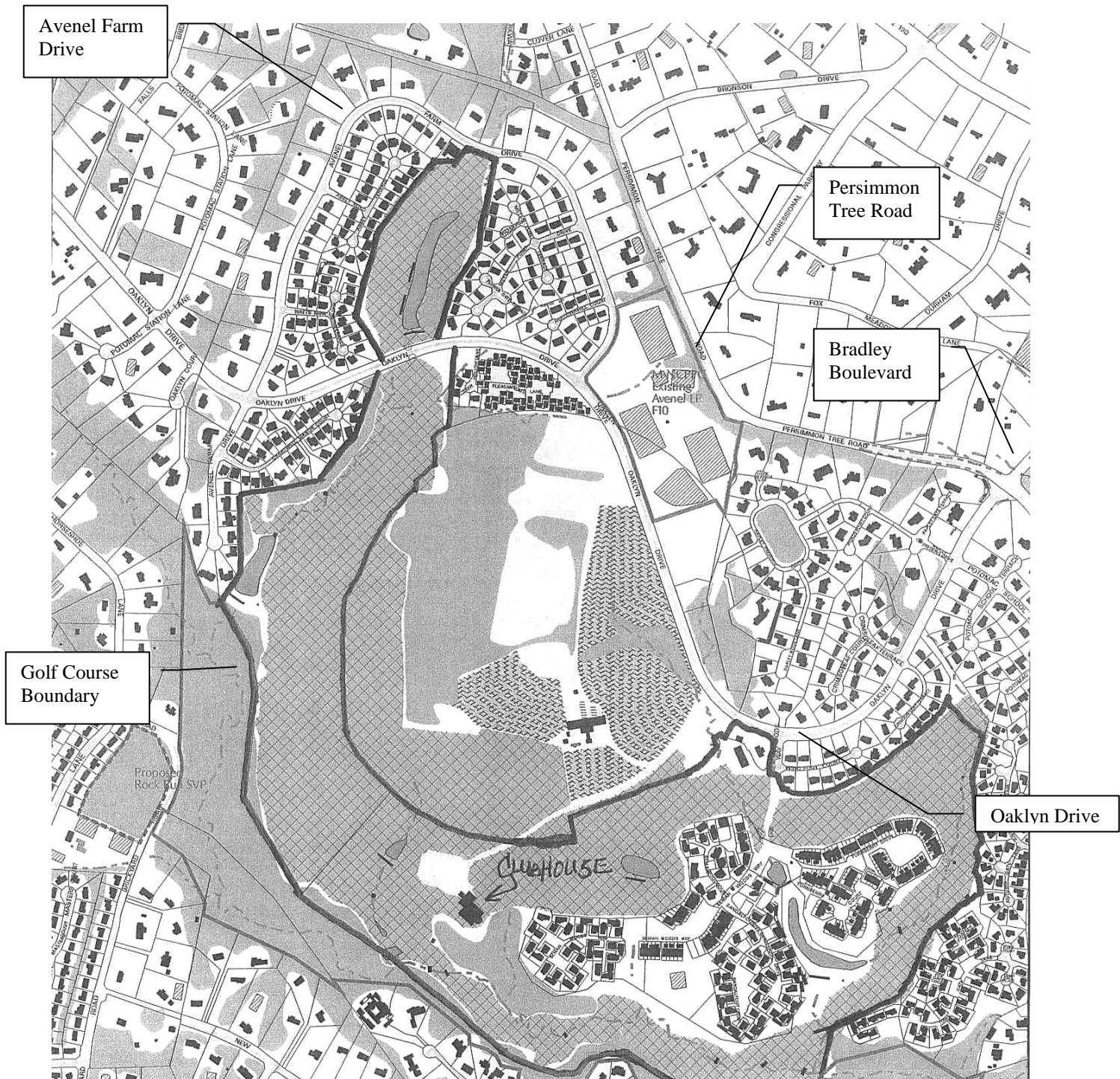
The subject property is located south and west of River Road, north of Mac Arthur Boulevard and south and east of Falls Road. More particularly, it is situated just southwest of the intersection of Bradley Boulevard/Oaklyn Drive and Persimmon Tree Road. The property is bisected by Oaklyn Drive, which winds through the subject site and the surrounding Avenel Subdivision. Oaklyn Drive joins Falls Road with Persimmon Tree Road, north of which it turns into Bradley Boulevard.

The Petitioner operates the subject site as a private golf club and, since 1987, has served as the host site for an annual PGA TOUR Event (a professional golf tournament). The property contains an 18-hole championship golf course with spectator mounds and natural, grassed amphitheaters positioned at strategic locations to allow for unobstructed viewing of tournament play. The site also includes a golf practice facility; a clubhouse with pro shop, locker rooms, administrative offices and dining area; a maintenance building; four shelter/rest areas; a snack stand and parking areas. Most tournament spectators arrive via shuttle bus from satellite parking lots, but some tournament parking is available on 60 acres covered by the WSSC easement/parking agreement. Environmental features of the property include Rock Run Creek, which runs through much of the southern and eastern portion of the golf course, and its tributaries that run through the northern and western parts of the course. The golf course was designed and built to incorporate these features, although at the time of its construction in 1984 and 1985, today’s flood plain and stream buffer restrictions were not in place. As a result, parts of the golf course

were built in the flood plain for Rock Run and its tributaries, resulting in significant flooding and erosion problems.

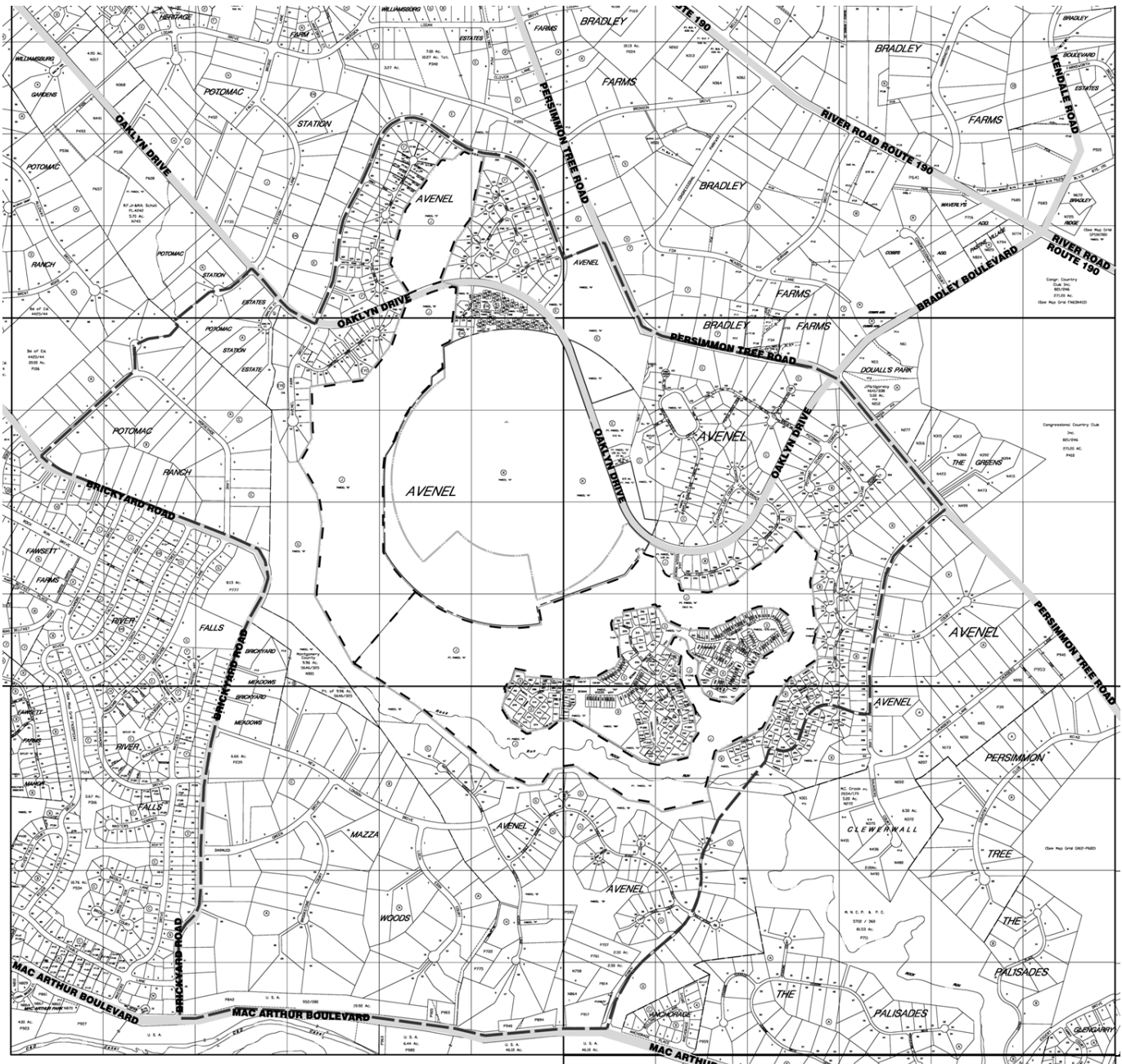
The golf course and the Avenel Subdivision were conceived and developed together. As shown on the map below, many homes were located along and within the golf course for the views.

**Vicinity Map from Staff Report**



As shown on the area map below, the Avenel Subdivision abuts the golf course to the north/northwest, east and south. To the south/southwest and west, the golf course is separated from the Mazza Woods (RE-2), Brickyard Meadows (RE-2), River Falls (R-200) and Potomac Ranch (RE-2) subdivisions by a wooded area. Technical Staff and the Petitioner's land planner defined the general neighborhood for this application as extending from River Road to the north to Persimmon Tree Road to the east, Mac Arthur Boulevard to the south and Falls Road to the west.

**Surrounding Neighborhoods Map, Ex. 64**



### ***B. Land Use History***

The Board of Appeals granted a special exception on June 13, 1984 that authorized the petitioner at that time, PGA TOUR, Inc., to construct and operate the golf course and related structures, including a 39,000-square-foot clubhouse with a dining room, a maintenance building, a driving range, four shelter/rest areas, a snack stand and parking areas. See Ex. 3(aa). The original special exception approval also authorized the use of the subject property as the host site for a PGA TOUR Event for five days in June, plus one week for preparation and two to three days for clean-up. The number of people attending the tournament was described as 80,000 to 100,000 over a five-day period, including 1,200 volunteers and 150 professional participants. Since the original approval, the Board has approved the following six modifications:

1. October 17, 1985. Approved modification to clubhouse size, location, configuration and associated infrastructure. Size was reduced from 39,000 to 30,000 square feet. Location was adjusted to better fit the topography and increase spectator opportunities. Less formal design for entrance drive was adopted, to preserve rural character of the area. See Ex. 3(cc).
2. March 13, 1986. Approved modification to permit construction of 4,000-square-foot, residential-type sales information center at the intersection of Oaklyn Drive and Beman Woods Way, in front of maintenance building. See Ex. 3(dd). Structure was intended for permanent use, first for residential sales and later as office space for the Avenel Community Association and PGA TOUR staff members.
3. August 14, 1986. Approved modification to permit Petitioner to host an additional professional golf tournament, on a one-time basis, in September 1986. See Ex. 3(e).
4. August 9, 1989. Approved modification to allow addition of storage shed for maintenance equipment, permanent canopy over clubhouse patio, nightly dinner for Avenel members and guests, and unlimited evening social events. See Ex. 3(f).

5. December 16, 1995. Approved modification to allow transfer of the special exception to TPC at Avenel, Inc., construction of new PGA TOUR storage building, conversion of existing PGA TOUR storage building to current use storage, expansion of maintenance building, construction of four concrete storage bins, replacement of existing underground storage tanks with two above-ground fuel tanks, and construction of a water quality structure. See Ex. 23(b).

6. March 8, 2004. Approved modification to remove a 1.35-acre portion of the property, containing an information center used by the Avenel Community Association and PGA TOUR staff, a storage building, and associated parking and landscape areas, from the special exception. The land and information center were to be permanently transferred to the Avenel Community Association.

### ***C. Master Plan***

The subject property is in the area covered by the *2002 Potomac Subregion Master Plan* (the “Master Plan”). The Master Plan’s “Land Use, Parks and Community Facilities” map identifies the subject property as a private or public recreation site, and the “Existing and Proposed Zoning” map recommends the property for continued RE-2C/TDR zoning. See Exs. 7(a) and (b). The Master Plan’s text does not discuss the subject site specifically, but both Technical Staff and the Petitioner’s planner interpret the Master Plan to recommend that the site continue to be used as a private recreation facility.

The Master Plan describes itself as “based on environmental principles” due to the area’s “significant and unique natural resources and its semi-rural character.” Master Plan at 33, excerpted at Ex. 7(c). Its recommendations emphasize environmental sustainability, including improved stormwater management. The Petitioner argues that its proposed modification would contribute to the Master Plan’s goals by performing stream restoration along severely eroded portions of Rock Run and its tributaries on the subject site.

The Master Plan contains the following recommendations for special exceptions (Master Plan at 35-36, excerpted at Ex. 7(c)):

- Limit the impacts of existing special exceptions in established neighborhoods. Increase the scrutiny in reviewing special exception applications for highly visible sites and properties adjacent to the [C&O} Canal.

- Avoid an excessive concentration of special exceptions along major transportation corridors.
- Protect the [C&O][ Canal National Historic Park, major transportation corridors and residential communities from incompatible design of special exception uses.

Neither Technical Staff nor the Petitioner commented on these particular recommendations. The Hearing Examiner finds that the proposed modification would not lead to a significant increase in the impacts of the golf course on the surrounding residential neighborhood, nor would it introduce any incompatible design elements to the area. The clubhouse is not near any homes and, as discussed in more detail later in this report, the renovation of the grounds and stream restoration are likely to have only positive impacts on the general neighborhood.

#### ***D. Proposed Modification***

The elements of the proposed modification may be broken down into four categories: golf course renovation and stream restoration; renovation of existing structures and improvements to entry drive; changes in general operations; and changes in PGA TOUR Event parameters. The Petitioner has prepared a chart, reproduced on the next four pages, which compares the structures and operations that are currently permitted, based on the original special exception grant and subsequent modifications, with the modifications now proposed. See Ex. 23(d). The handwritten notations were made by the Hearing Examiner, during the hearing, to reflect changes to the modification request that the Petitioner made orally during the hearing (two subject headings have also been moved to their proper locations).

Following the chart is a discussion of each of the four categories of the modification elements.

**TPC AT AVENEL (the “SPECIAL EXCEPTION PROPERTY”)****REVISED SUMMARY OF APPROVED<sup>1</sup> AND PROPOSED SPECIAL EXCEPTION ELEMENTS**

	<b>Approved</b>	<b>Proposed</b>
<b><i>SITE &amp; FACILITIES</i></b>		
<b>Property:</b>	TPC at Avenel 10000 Oaklyn Drive Potomac, Maryland 20854	No change
<b>Acreage:</b>	260 +/-	No change
<b>Facilities:</b>	<ul style="list-style-type: none"> <li>• 18-hole championship golf course</li> <li>• Golf driving range with teaching facility</li> <li>• 30,000 square-foot clubhouse, including pro shop, locker rooms, administrative offices and dining area</li> <li>• 8,000 square-foot maintenance building</li> <li>• Four (4) 200- square foot shelters/ rest areas</li> <li>• 400 square-foot snack stand</li> </ul>	<ul style="list-style-type: none"> <li>• Proposed golf course/ environmental enhancements and improvements</li> <li>• Proposed 3,600 square-foot addition to clubhouse</li> <li>• Proposed installation of a roof on the existing wash pad portion of the maintenance structure</li> <li>• Proposed entry drive enhancements</li> </ul>
<b>Golf course features:</b>	<ul style="list-style-type: none"> <li>• Several low-level stream crossings (able to pass 2-year flood underneath)</li> </ul>	<ul style="list-style-type: none"> <li>• Raise stream crossing to allow 10 year flood to pass underneath</li> </ul>

<sup>1</sup> Per original special exception approval (S-914) and subsequent modifications

**GENERAL  
OPERATIONS**

<b>Days/ Hours of Operation:</b>	Monday thru Sunday	Monday thru Sunday
<b>Golf course:</b>	<p>Weekdays: 8 a.m. to sundown Weekends: 7 a.m. to sundown</p> <p>Golf course open 6 days per week in the winter</p>	<p><u>April 1- October 31</u></p> <p>Weekdays: 7:30 a.m. to sundown Weekends: 7 a.m. to sundown</p> <p><u>March &amp; November</u></p> <p>All days: 8 a.m. to sundown</p> <p><u>December 1- February 29</u></p> <p>All days: 10 a.m. to sundown</p> <p>Maintenance activities to begin prior to first tee time</p>
<b>Clubhouse:</b>	<p>Breakfast, lunch and dinner service daily</p> <p>Year round: Special private functions, i.e. Weddings, bar mitzvahs, parties, in the evenings until 12:00 midnight</p>	<p><u>April 1<sup>st</sup>- October 31<sup>st</sup></u> Tuesday- Sunday: Breakfast, lunch and dinner served from 30 minutes prior to first tee-time until 9:00 p.m. Monday: Private outings, 8:00 a.m. to 8:00 p.m.</p> <p><u>November 1<sup>st</sup>- March 31<sup>st</sup></u> Weekdays: Lunch and dinner served from 11:00 a.m. to 5:00 p.m. (8:00 p.m. on Friday) Weekends: Breakfast, lunch and dinner served from 30 minutes prior to first tee-time until 8:00 p.m.</p>
<b>Total # of Employees:</b>	<p>50 full-time:</p> <ul style="list-style-type: none"> <li>• Approx. 15 maintenance</li> </ul>	<p>85 full-time employees:</p> <ul style="list-style-type: none"> <li>• Approx. 30 maintenance</li> </ul>



	<p>persons</p> <ul style="list-style-type: none"> <li>• Approx. 6 pro shop employees</li> <li>• Approx. 2 locker room attendants</li> <li>• Approx. 15 restaurant employees</li> <li>• Approx. 7 driving range/ golf cart persons</li> <li>• Approx. 5 general administrative persons</li> </ul> <p>No more than 40 persons working at any given time</p>	<p>persons</p> <p>No more than 50 persons working at any given time</p>
<b>Total # of Rounds Per Day</b>	220 maximum	No change to number of rounds, but add ability of players to walk and/or use caddies
<b>Total # of Parking Spaces Provided:</b>	<p>250 spaces at the clubhouse</p> <p>20 spaces at the maintenance facility</p>	<p>271 provided at the clubhouse</p> <p><del>Add 18 parking spaces at the proposed tournament office building</del></p>
<b>Maintenance Equipment:</b>	<ul style="list-style-type: none"> <li>• 75 electric carts</li> <li>• Mowers, sod cutter, small tractors, utility vehicles</li> </ul>	No change

DELETED  
PER  
APPLICANT'S  
COUNSEL

<b>TOURNAMENT OPERATIONS</b>		
<b>Tournament Schedule:</b>	<ul style="list-style-type: none"> <li>Typically during the first week of June</li> <li>Preparation time: 1-2 weeks</li> <li>Tournament: 5 days (Wednesday thru Sunday)</li> <li>Cleanup time: 1-2 weeks</li> </ul>	<ul style="list-style-type: none"> <li>Flexibility to have tournament anytime from April-October</li> <li>Preparation time: 6 weeks</li> <li>Tournament: 7 days (Monday thru Sunday)</li> <li>Cleanup/ breakdown time: 3 <del>6</del> weeks <i>PER APPLICANT'S COUNSEL</i></li> </ul>
<b>Tournament Name/ Sponsor</b>	Kemper Open tournament	PGA TOUR Event, to allow tournament name and sponsor to remain flexible
<b>Tournament Facilities:</b>	In addition to the facilities listed above: <ul style="list-style-type: none"> <li>Television pads and towers</li> <li>Hospitality tents</li> <li>Food service tents</li> <li>Service trailers</li> </ul>	No change
<b>Tournament Attendance:</b>	Ranges from 80,000 to 100,000	<del>100,000-150,000</del> No CHANGE REQUESTED <i>PER APPLICANT'S COUNSEL</i>
<b>Volunteers:</b>	Approx. 1,200	Approx. 1,500
<b>Parking:</b>	<ul style="list-style-type: none"> <li>3,750 cars parked on adjoining property owned by WSSC</li> <li>VIP and overflow parking across Oaklyn Drive</li> <li>Satellite parking at Westfield Shopping Center with shuttle bus service</li> </ul>	No change

### 1. Golf Course Renovation and Stream Restoration

Avenel is a 20-year-old golf course which, according to the testimony of three witnesses, is showing its age. The turf consists mostly of a non-native weed grass that requires large amounts of

water, fertilizer and pesticides. The course layout is not up to today's standards for a competitive, championship golf course. Moreover, parts of the course – holes 5, 6, 9, 10, 11 and 12 – are subject to periodic flooding because they are located in the natural floodplain of Rock Run and its tributaries, which, due to severe erosion, have a tendency to overflow their banks during even a moderate rain storm. The photographs that follow depict the condition of these parts of the course during and following a flooding incident. The golf course superintendent, Dennis Ingram, testified that the golf course is closed about six to seven times per year, for three to five days at a time due to flooding.

**Flooding from off-site drainage, 5<sup>th</sup> Green, tributary to Rock Run, upstream of Pond 3. From Ex. 3(g)**



**Back of 11<sup>th</sup> Green, Rock Run, from Ex. 3(g)**



**Debris against cart path crossing 11<sup>th</sup> fairway, Rock Run – March 2005, from Ex. 3(g)**



**Crossing showing relocated stream near 16<sup>th</sup> tee, downstream of horse farm, Mar 2005, from Ex. 3(g)**



TPC at Avenel, Inc. proposes to completely renovate the golf course and make it more competitive, including rebuilding all greens, tees and bunkers, replacing fairway turf, redesigning holes 9 through 13, enhancing the existing golf practice facility and making improvements to the remaining holes.

In total, approximately 120 to 125 acres of the 260-acre site would be disturbed in connection with the proposed modification. See Tr. Nov. 8 at 3-4. As the Petitioner's representative, James Triola, observed, the game of golf has changed over the last 20 years, so changes to the course are needed to make it more competitive for both members and professionals. These changes include altering the layout and design of certain holes to "enhance the strategic value of the golf course and improve the flow and pace of play." Ex. 23(a) at 8. Some changes would be designed to make the course more walkable, something that golfers were not generally interested in 20 years ago. Although not shown on the full-scale plans, Petitioner may add a water feature to the 18<sup>th</sup> hole to enhance its "risk-reward" and aesthetic value. This feature would likely consist of two small ponds at graduated heights, potentially with a small waterfall between them. The practice facility would also be enhanced, creating a "modern" practice facility that would allow players to practice all aspects of the game. The practice facility would be substantially reconfigured and enlarged, but would remain at its current location, north of the clubhouse.

A key component of the renovation is stream restoration, which is intended to significantly reduce problems with stormwater run-off and flooding. As explained by Petitioner's stream restoration expert, Ward Oberholtzer, the stream beds in many locations on the site do not have the layers of bedrock and other organic material that are normal for this region. It appears that during gold mining operations a hundred years ago, the natural material of the stream beds was replaced with heavy clays that do not support healthy plant life. The lack of plant life has contributed to the erosion problems that currently plague Rock Run and its tributaries. The proposed stream restoration work is intended to create a healthier stream bed and vegetated flood plain that will be able to contain the flows from normal storms. In total, the Petitioner proposes to perform stream restoration and stream relocation work on 6,899 linear feet of Rock Run and its tributaries. This would include creating more than 11 acres of wetlands.

The basic steps in stream restoration would be to remove sediment from the stream channels, re-build the stream beds with two layers of gravel and a layer of high-quality soil, create a vegetated flood plain and stream buffer, and raise the grade on the fairways of the affected holes. In some locations, the stream would be partially relocated to widen tight bends and/or move the stream away

from the area of play. Some locations might require stability measures in addition to vegetation, such as rock retaining walls. The stream restoration plan also involves raising and widening some of the existing bridges over the stream that are used by pedestrians, golf carts and maintenance vehicles. In some places, the size of the bridge openings has constrained the width of the stream channel, which increases the velocity of storm water flowing through the channel, contributing to its erosive impact.

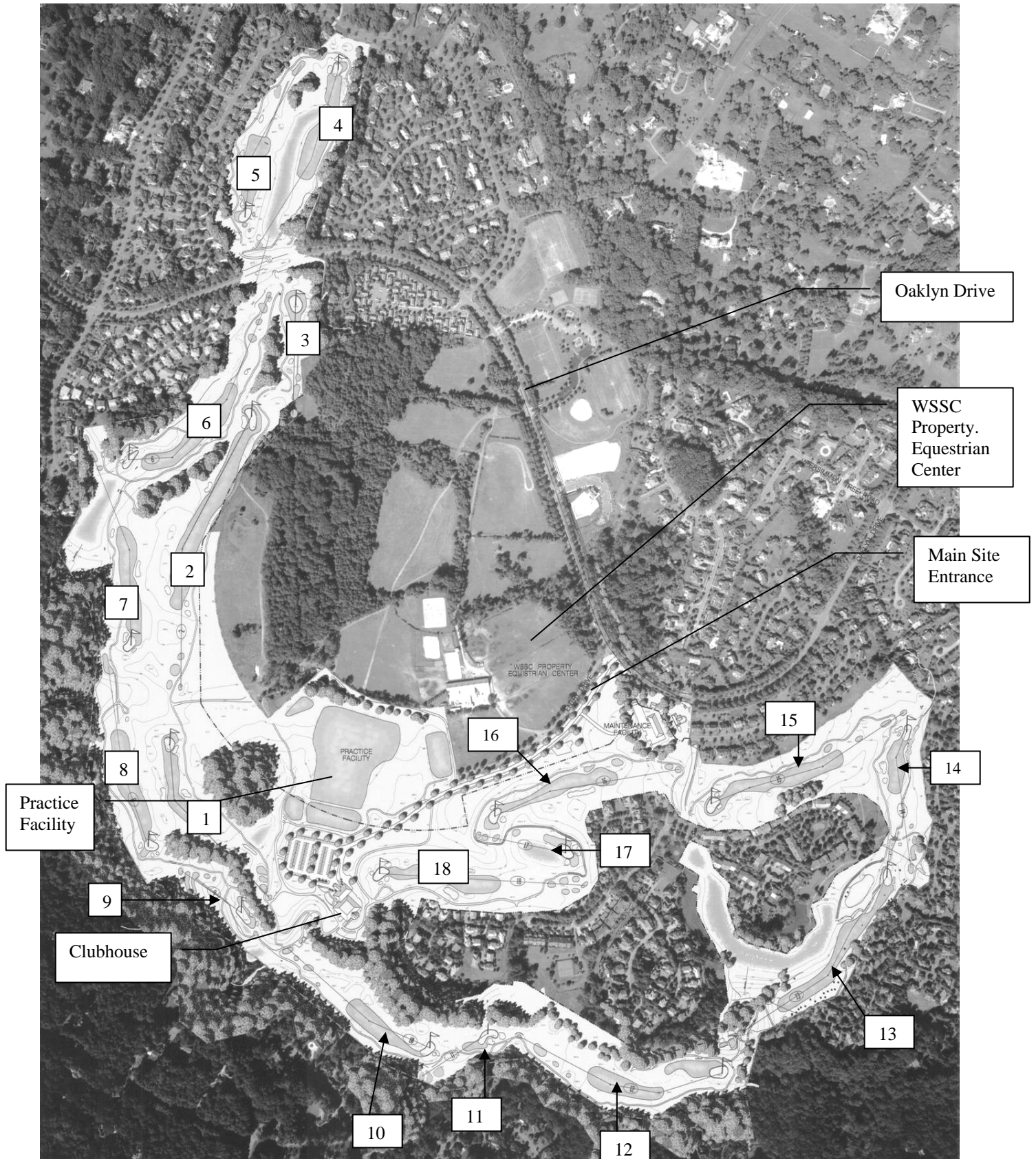
The Petitioner points with some satisfaction to a letter from the Maryland Department of the Environment, which states that the agency concurs with the Petitioner's conceptual presentation of stream improvements. See Ex. 60. Such a letter apparently is quite rare at this stage of a project. Petitioner's counsel notes that the stream restoration proposed for Avenel is considered a potential pilot program that could be the beginning of a larger solution County-wide. The Planning Board and Technical Staff have recommended conditions of approval that include specific requirements regarding the forest conservation plan and the final stream restoration plan, as well as extensive provisions for monitoring the implementation of stream restoration. These conditions are repeated in the conditions of approval recommended at the close of this report. An additional conditions has been included to reflect the request of the Brickyard Road Citizen's Association for community participation in monitoring.

The plans on the next several pages display Petitioner's golf course renovation and stream restoration plans, both on a large scale and with some detail in particular parts of the course.<sup>1</sup>

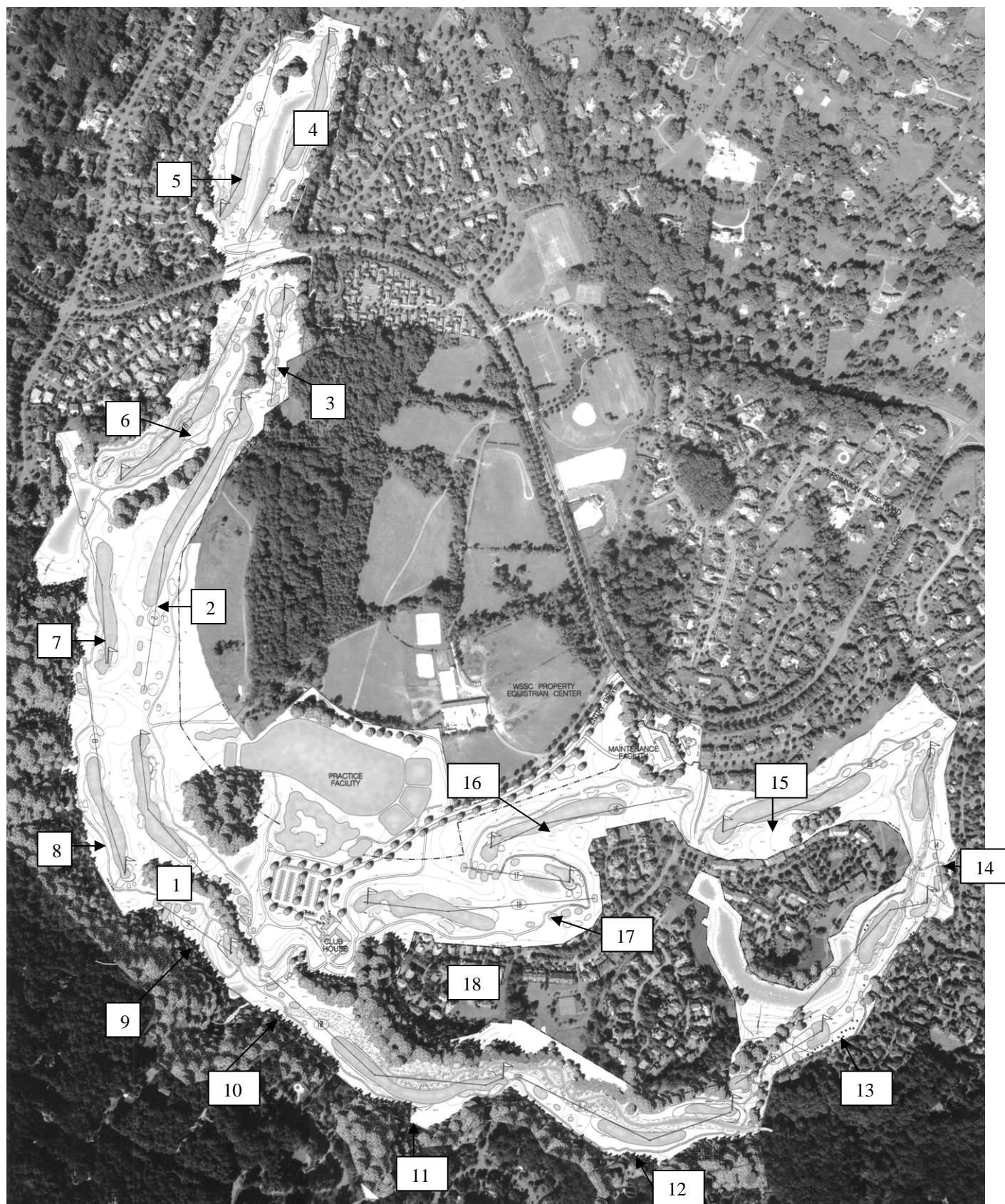
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<sup>1</sup> Many of these exhibits contain a slight inaccuracy with respect to the boundary of the special exception area near the maintenance facility – they reflect the original boundary of the special exception area, showing the 1.35-acre area that was removed in 2004 and deeded to the Avenel Community Association as though it were still part of the golf course. This inaccuracy was discovered late in the review process. Due to the severe time constraints caused by its desire to start construction in April, which would allow the new grass to be planted at the appropriate time of year, the Petitioner corrected the inaccuracy, at the Hearing Examiner's request, only on the exhibits where this level of accuracy is most important: the Special Exception Area/Existing Conditions map, Exhibit 4(a); relevant pages of the Site Plan for Special Exception Modification, Sheets 1, 2, 10 and 14 of 18, Exhibits 23(f), (g), (o) and (s); and the final overall site plan, also entitled Site Plan for Special Exception Modification, Exhibit 99. The recommended conditions of approval would require to the Petitioner to submit corrected versions of the remaining exhibits that are currently inaccurate within 15 days of the Board's action on this matter.

## Existing Golf Course Layout, Ex. 65

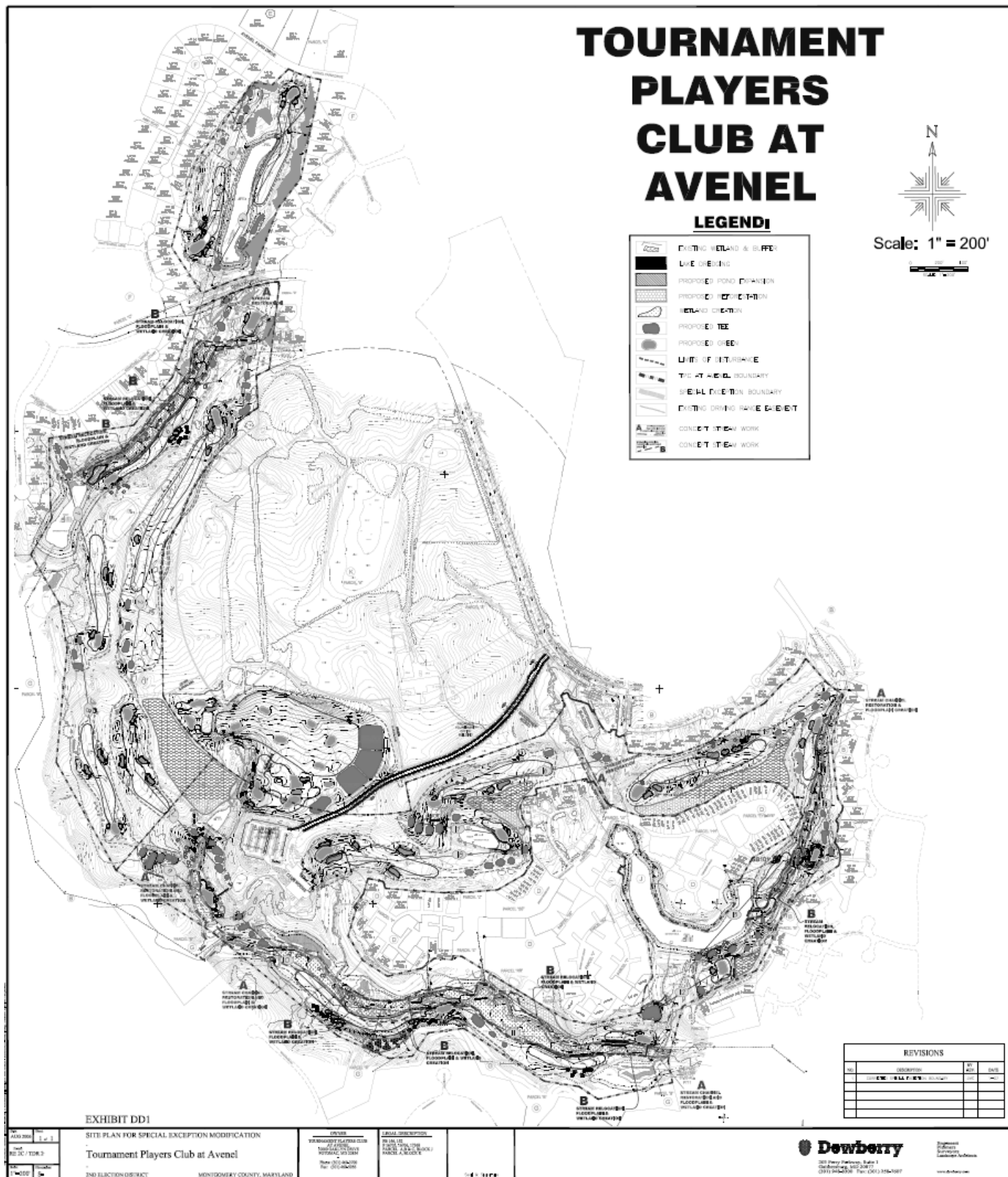


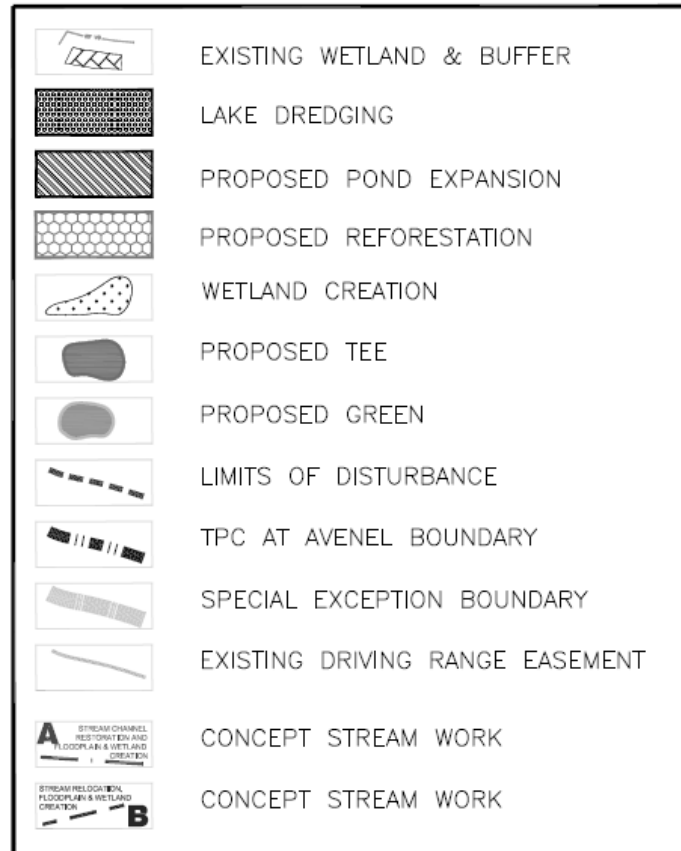


**Proposed Golf Course Layout, Ex. 67**



Proposed Site Plan with Modification in Place, Ex. 99 (see next page for legend)



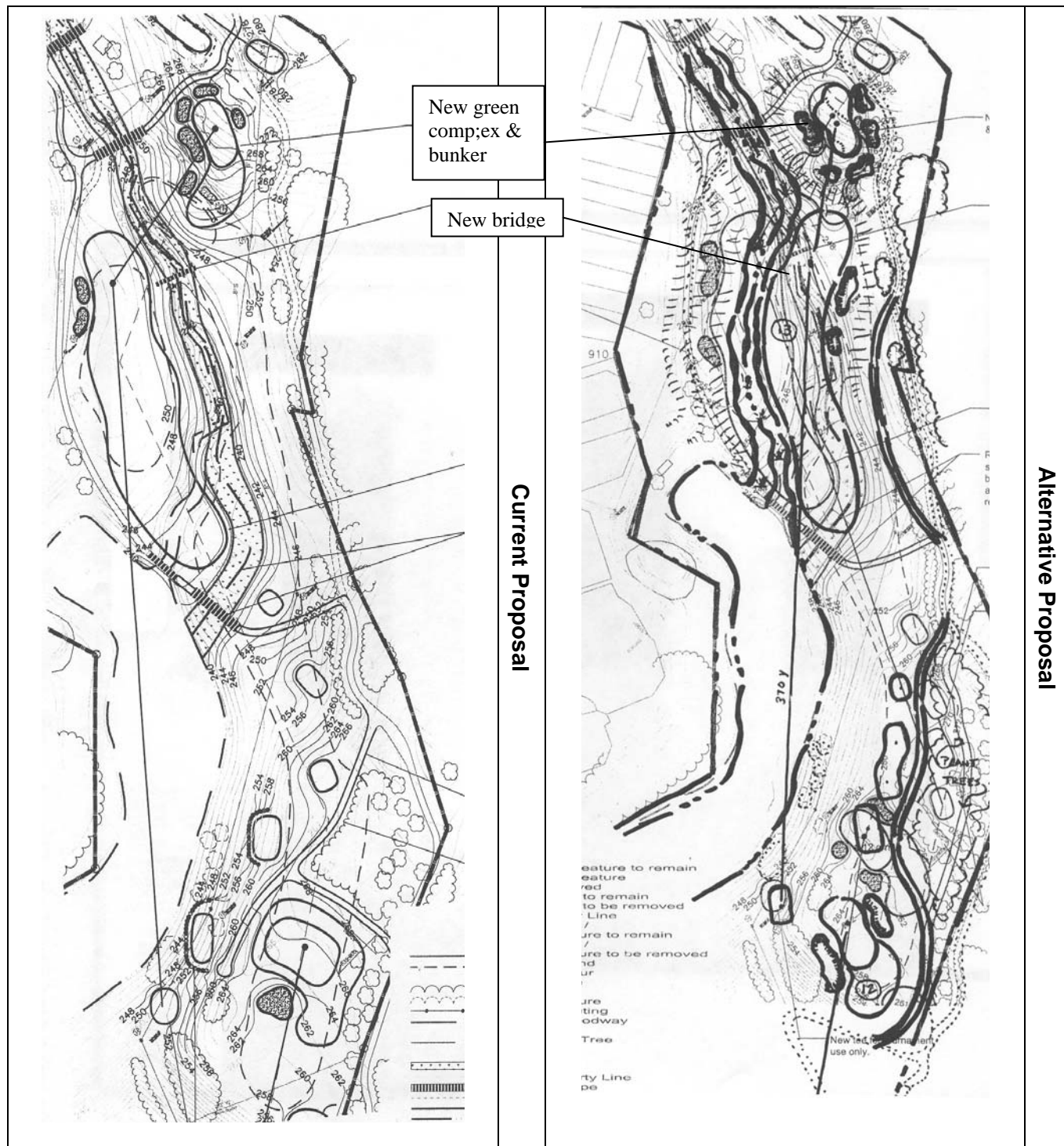


The Petitioner has offered an alternative design for hole 13, in response to concerns raised by local residents Thomas and Linda Podesta. See Ex. 53. The Podestas fear that the present design for hole 13 would lead golfers to hit to the left from the tee, which could increase the tendency for balls to stray into neighboring yards. The Petitioner's project manager for the proposed renovation, Richard Brogan, suggested that the proposed design for hole 13 would not cause this problem, because any tendency to hit to the left because of the line of play would be offset by a desire to hit to the right to avoid the nearby lake. Nonetheless, the Petitioner has offered an alternative design that would place the fairway to the right of the stream, rather than to the left, as shown below.

Mr. Brogan noted that the portion of Rock Run adjacent to hole 13 is intended to be relocated and restored, in any event, which provides some flexibility in designing hole 13. Environmental Staff reviewed the alternative design for hole 13 after the hearing, and commented that it raises a number of questions about impacts to the stream channel. See Ex. 105. Staff recommends that the configuration of the golf course and stream channel in this area be addressed during site plan review. This is consistent

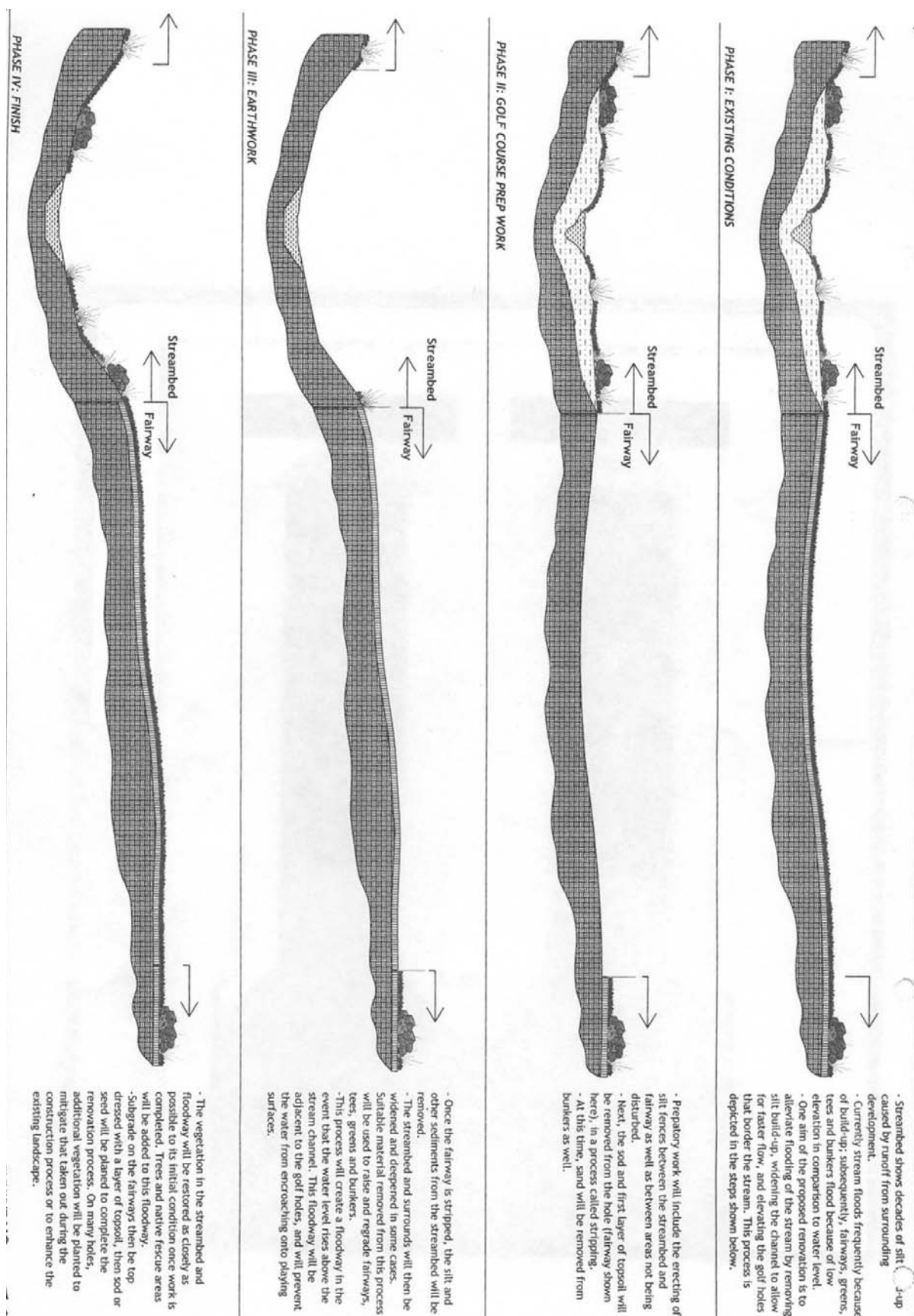
with the Petitioner's request that the Board of Appeals approved the modification with either of the two alternatives for hole 13, allowing the final design to be worked out during Planning Board site plan review.

### Current Proposal and Alternative Routing for Holes 12 and 13, Ex. 93



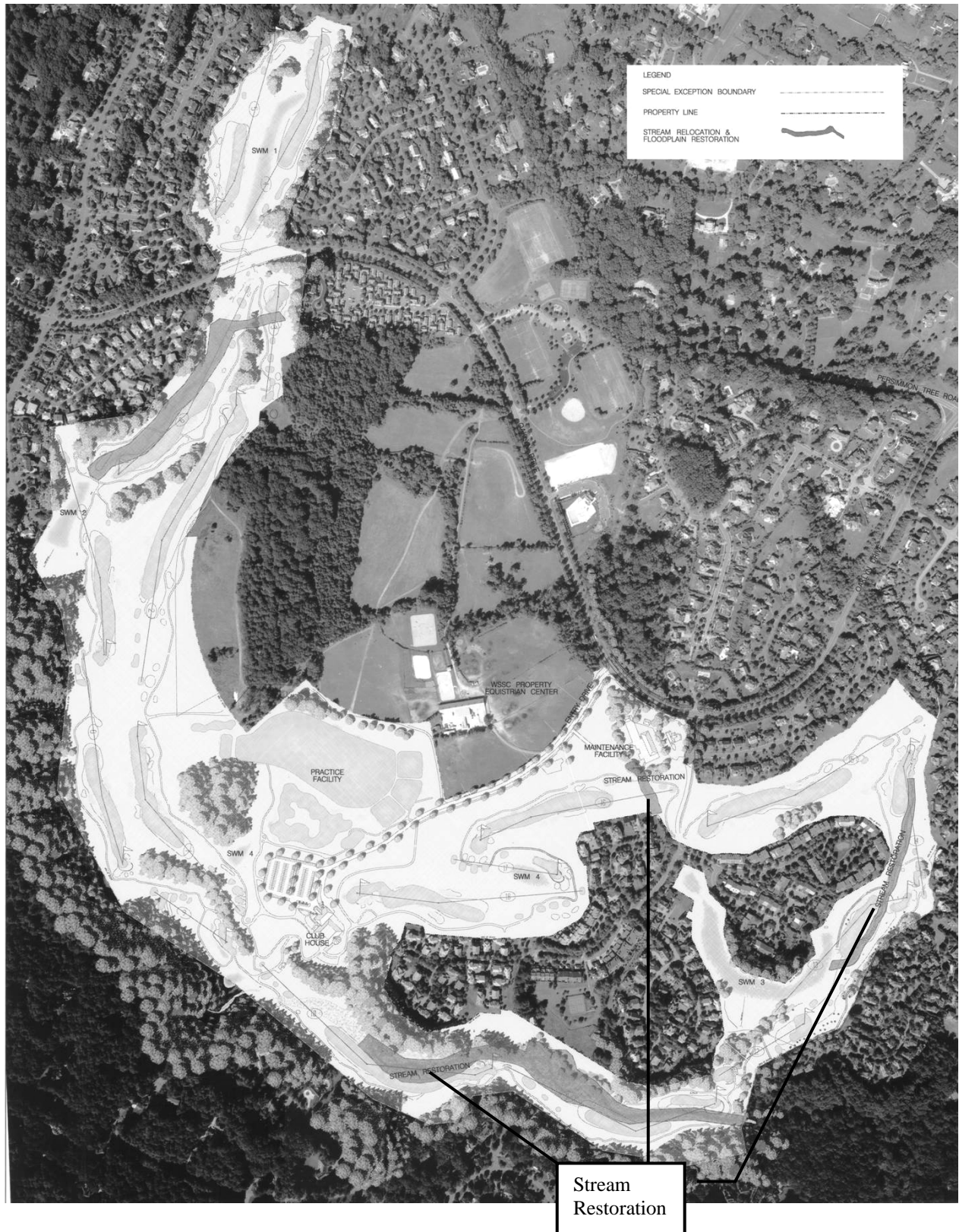
The drawings on the next page depict the general steps in the proposed golf course renovation and stream restoration.

# Golf Course Renovation and Streambed Restoration: Major Steps in Sequence, from Ex. 72



The overall stream restoration plan is presented below, followed by photographs and artists' renderings of the "before" and expected "after" conditions in particular locations.

### Streambed and Floodplain Restoration Plan, Ex. 83

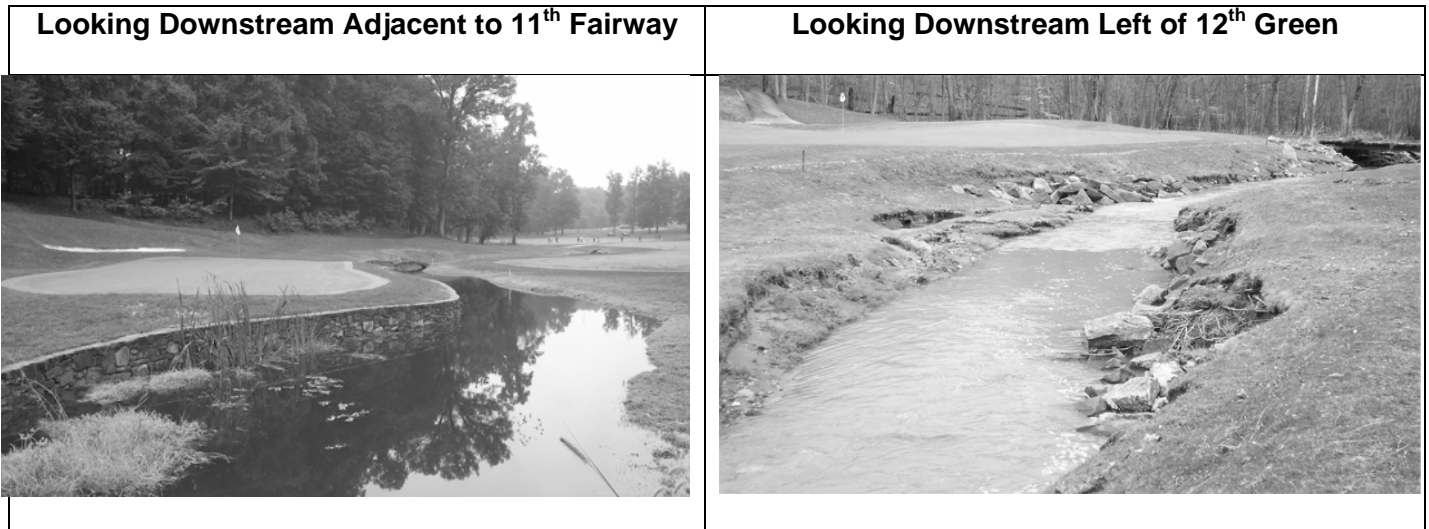




**Holes 10-13: Existing Stream Channels and Proposed Restoration, Ex. 82**



**Hole 6: Current Conditions and Illustration of Proposed Stream/Floodplain Restoration, Ex. 84****Views of Rock Run Tributary Adjacent to 6<sup>th</sup> green****Looking Upstream****Looking Downstream****Artist's Rendering of Proposed Realignment of Tributary and Golf Course**

**Hole 11: Current Conditions and Illustration of Proposed Stream/Floodplain Restoration, Ex. 85****Views of Rock Run Near Holes 11 and 12****Artist's Rendering of Proposed Realignment of Rock Run and Golf Course**

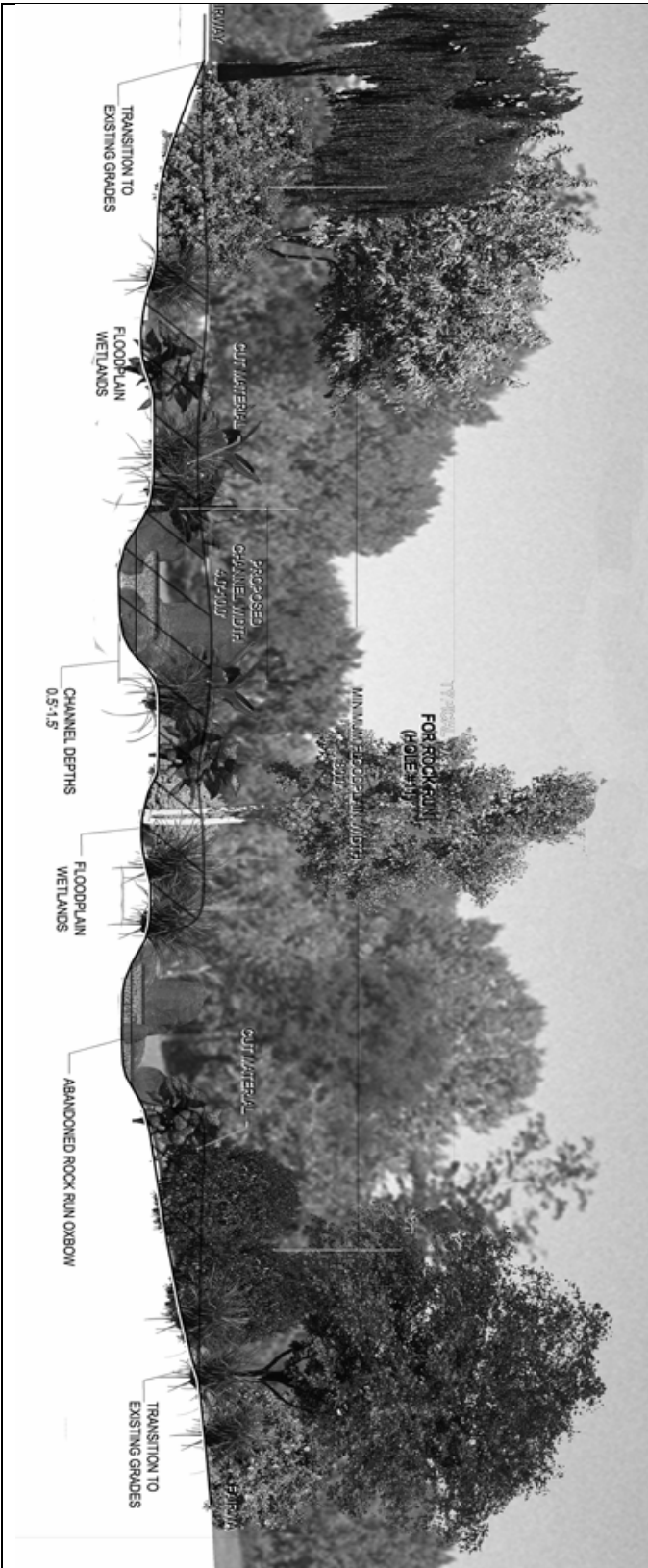


Typical Cross-Sections Proposed Post-Restoration

Cross-Section Proposed for Rock Run Post-restoration, from Exhibit 85



Cross-Section Proposed for Rock Run Tributaries Post-restoration, from Exhibit 84



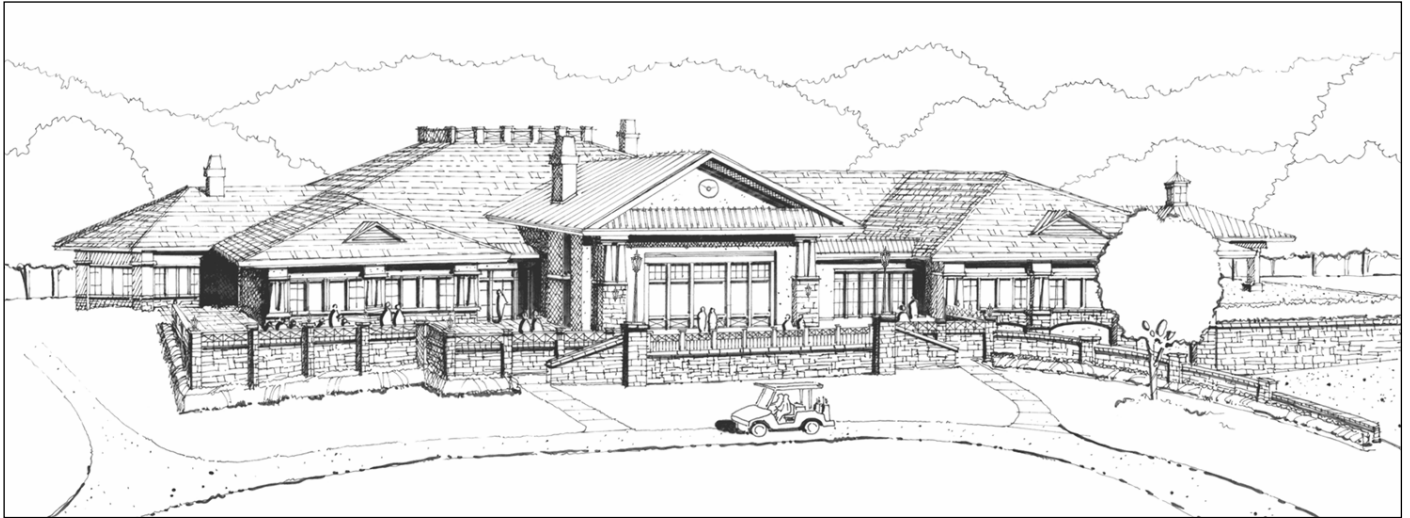
## **2. Renovations of Structures and Entry Drive Improvements**

The Petitioner proposes a complete interior and exterior renovation of the clubhouse, and an expansion of its size from 33,340 square feet to approximately 37,000 square feet, an increase of about 11 percent.<sup>2</sup> The Petitioner finds that the existing, 20-year-old clubhouse has become dated, and no longer fully meets the needs of club members or adequately accommodates the PGA TOUR Event. Much of the operational infrastructure is failing (heating and cooling systems, lighting, fire and security systems, plumbing fixtures, and communications and technology systems), there is insufficient space for members' needs and tournament administration, and the clubhouse lacks a separate dining area for players during a PGA TOUR Event, which has become a staple at PGA TOUR Event sites. The Petitioner proposes significant improvements to make the clubhouse a first-rate facility, as part of positioning Avenel as a premier membership facility and PGA TOUR Event site.

The principal change to the building footprint would be the addition of a player's dining area for PGA TOUR Events. The principal exterior change would be rebuilding the patio to accommodate more people and "to provide a more dramatic and aesthetically valuable setting for the final hole of the golf course . . . ." Ex. 23(a) at 11. The patio would be finished in stone, with decorative railings. The Petitioner also proposes to enhance the "entry experience" with a covered entrance to the golf shop, to replace windows and doors, make minor changes in façade details and architectural elements to create a more upscale appearance, construct a new roof with copper and slate-like materials with a craftsman look, erect new signage, and improve access walkways and drop-off areas. An artist's rendering of the renovated clubhouse follows.

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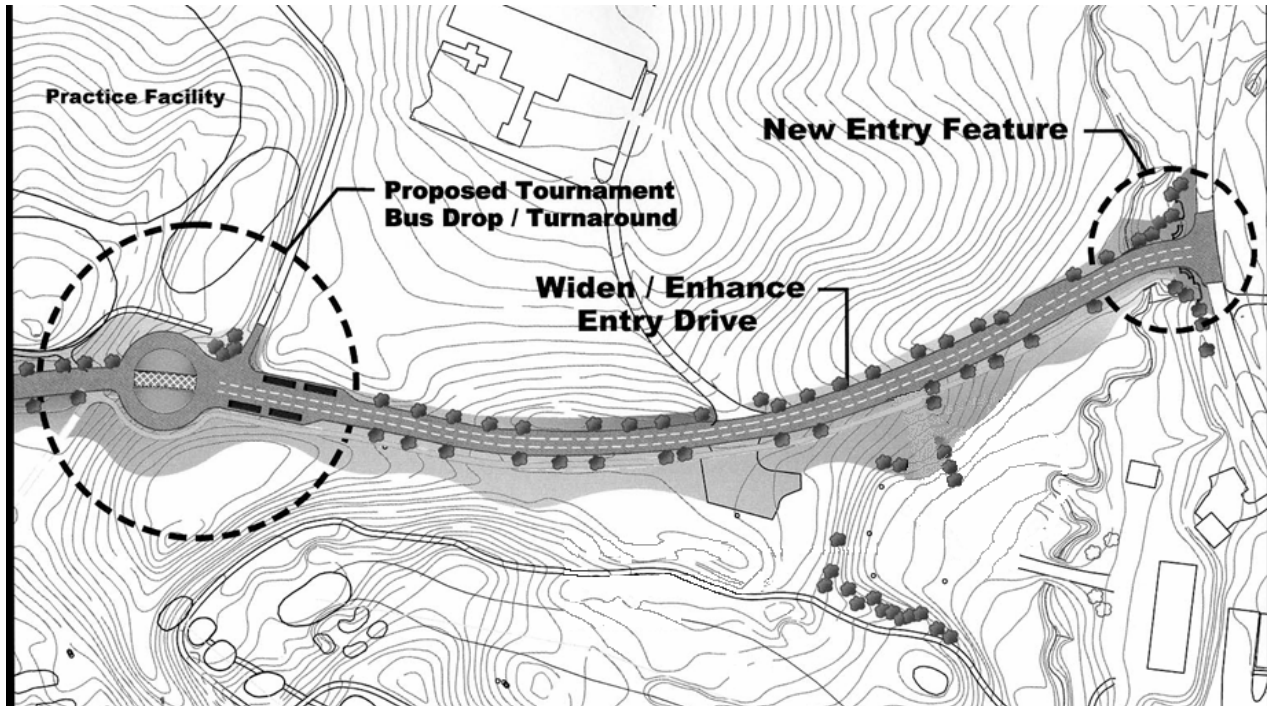
<sup>2</sup> The original grant of special exception included approval for a 39,000-square-foot clubhouse. The first modification of the terms of the special exception, issued just 15 months after the initial approval, reduced the approved size of the clubhouse to 30,000 square feet. As it turns out, the current size of the clubhouse is 33,340 square feet (the record does not explain the discrepancy between the approved size and the actual size). The Petitioner's Revised Statement in Support, Ex. 23(a), requests that the Board "reinstate permission to construct a 39,000 square -foot clubhouse," as contemplated in the original special exception approval. Ex. 23(a) at 10. Testimony and a letter from Petitioner's counsel submitted after the Statement in Support, however, indicate that the Petitioner's current intention is to expand the clubhouse to approximately 37,000 square feet. See Ex. 59(a) at 2; Tr. Nov. 6 at 106-107. The Hearing Examiner interprets the Petitioner's request per the more specific information provided in testimony and more recent written evidence, rather than in the Statement in Support.

**Artist's Rendering of Renovated Clubhouse as Seen from 18<sup>th</sup> Green, from Ex. 74**

The Petitioner requests approval to install a roof structure on the existing wash pad portion of the maintenance structure. The present petition initially included a request to build a tournament office building on WSSC property, as well, which has been withdrawn. See Ex. 23(a) at 11.

The main entry drive for the site is a two-lane, two-way drive with grass and trees on both sides. It has 24 feet of pavement contained within a 50-foot easement across WSSC property. The Petitioner proposes to widen the pavement to 36 feet, with three lanes, to accommodate increased traffic during the PGA TOUR Event, and to create a roundabout for use as a bus drop-off/pick-up area during the event. Additional improvements would include new landscaping, tree plantings and signage “to create an improved and more dramatic experience for members, guests and visitors to the PGA TOUR Event. . . .” Ex. 23(a) at 11. The WSSC has submitted a letter into the record stating that it is committed to working with TPC at Avenel to allow the proposed modifications over WSSC property, in hopes “that these accommodations will be of assistance in maintaining the TPC at Avenel as a premier facility in both the local and national market.” Ex. 24. Specifically, the letter states that WSSC has agreed, among other things, to increase the width of the existing entry drive easement from 50 feet to 70 feet. An artist's rendering of the proposed new entry drive is shown below.

### New Entry Drive and Roundabout, Ex. 73



### 3. Changes in General Operations

The existing terms and conditions of the special exception limit the dates and times of golf course use, the number of employees, the number of rounds played by day and the use of golf and maintenance equipment, among other items. The Petitioner requests a series of modifications that would relax some of these conditions. As described by Mr. Triola, these modifications are intended to address operational elements that should be part of a private, high-end golf course to be competitive with other facilities. The proposed changes are summarized in the table on pages 11-14 above. The potential impact of these changes is discussed below.

Days/Hours of Operation. The proposed modification would effect the following changes:

- Allow the golf course to be open seven days a week all year round, rather than six days a week during the winter.
- Allow play to begin at 7:30 a.m., half an hour earlier than the course currently opens on spring-summer-fall weekdays, and half an hour later than it currently opens on March and November weekdays.

- Specify that golf course maintenance activities may begin prior to the first tee-time.
- Allow play to continue until sundown and remove the “last players allowed on the course” times -- 2:00 p.m. during the winter and 5:00 p.m. the rest of the year. Mr. Ingram, the golf course superintendent, testified that because there are no lights on the golf course, golfers have to be off the course by sundown. He suggested that this proposed change would allow golf course staff to use their judgment, including their knowledge of how quickly or slowly particular players move through the course, to decide the latest time that each group of players may start a game.
- Allow private functions in the evenings until 12:00 midnight, which is consistent with current conditions and the current practice.
- Specify hours for meal service starting half an hour before the first tee time, with slightly shorter hours during the winter months.

Number of Employees. The proposed modification would increase the number of permitted employees from 50, with no more than 40 on site at one time, to 85, with no more than 50 on site at one time except for “limited large-scale events.” Ex. 23(a) at 15. Mr. Ingram testified that employee shifts are spread over a long period, between the pre-tee-time preparation activities and evening events in the clubhouse. For example, maintenance workers start between 5:30 and 6:30 a.m., depending on the time of year and how many golfers are scheduled to play that day, and they leave by mid-afternoon. Some of the restaurant employees, on the other hand, don’t arrive until the afternoon. Petitioner’s witnesses indicated that the phrase “limited large-scale events” refers to the annual PGA TOUR Event. Preferring specificity over vagueness, the Hearing Examiner has recommended a condition of approval that refers directly to the PGA TOUR Event.

Caddies and Walking. The terms of the special exception currently specify that all players will use golf carts, and that no caddies will be available. The modification would eliminate these restrictions, allowing players to opt for the health benefits of walking and to have caddies as part of special events “or in connection with . . . providing a premium golf experience.” Ex. 23(a) at 16. The Petitioner

states that allowing players to walk the course would not cause any significant slowing in the pace of play or adverse effects on the golf course. Reducing the use of carts, moreover, avoids the impact of driving carts on grass and other natural features. Technical Staff notes that using caddies during PGA TOUR Events tends to reduce noise and allow for speedier play. See Ex. 41.

#### **4. Changes in PGA TOUR Event Operations**

The current terms of the special exception place a number of limitations on the timing and operation of the PGA TOUR Event that the Petitioner would like to modify or eliminate.

Event Name. The special exception terms refer to the “Kemper Open,” but the Kemper Insurance Companies no longer sponsor an event at Avenel. Petitioner requests that the special exception permit a “PGA TOUR Event,” as the event sponsor is subject to change over time.

Length and Dates. The special exception terms currently specify that a PGA TOUR Event may be held each year beginning on or about May 30 and running for five days (Wednesday through Sunday). The Petitioner requests permission to hold a PGA TOUR Event, or similar event, during a seven-day period (Monday through Sunday) between April and October. This latitude is requested to accommodate potential changes to the tournament sponsor and the PGA TOUR schedule, as well as to make the more temperate fall months available for a PGA TOUR Event. The current early-June time frame has a history of hot, muggy weather that discourages spectators, and rain that can delay completion of a tournament.

Preparation and clean-up time frame. The terms of the special exception currently specify, as described in the original hearing in this matter, that the PGA TOUR Event includes one week of preparation time beforehand and two to three days of clean-up time afterwards. However, hospitality services and expectations have become more sophisticated over time, lengthening considerably the amount of preparation and clean-up time necessary. Unlike some PGA TOUR Event sites, Avenel has no permanent structures to host a tournament. Accordingly, preparation includes staking out numerous tents, providing them with electricity and telephone lines, setting up television broadcasting towers, bringing in temporary trailers for various uses, bringing in courtesy cars on tractor-trailers and setting up bleachers

and vendor areas. The Petitioner requests approval for a six-week preparation period and a three-week clean-up time.<sup>3</sup>

Technical Staff recommended that the preparation period be limited to three weeks and the clean-up to one week. This recommendation was not supported, however, by any analysis explaining the basis for this recommendation. See Staff Report, Ex. 27 at 7; Ex. 41 item six. The Planning Board recommended permitting a preparation period of six weeks, “with primary event operations setup activities limited to three (3) weeks prior to an event,” and up to three weeks for clean-up/breakdown. See Ex. 35 at 4. The Planning Board did not, however, provide any reasoning to explain the basis for this recommendation. The Hearing Examiner assumes that the intent of both Technical Staff and the Planning Board was to limit the number of days with a higher level of activity on the site, to limit neighborhood impacts. Based on the testimony, however, it is not clear that limiting the length of the preparation and clean-up periods would reduce adverse impacts on the neighborhood. The Petitioner contends that a shorter preparation period would compress the same amount of activity into a shorter number of days, resulting in potentially greater impacts during those few days than if the activities were spread out. Absent any rationale from the Planning Board or Technical Staff to support imposing shorter time periods, the Hearing Examiner recommends approving the periods the Petitioner has requested, with a limitation similar to that recommended by the Planning Board, to the effect that preparation activities during the first three weeks of the six-week period shall be moderate in intensity.

The Petitioner provided a breakdown of the preparation activities, reproduced on page 38, which shows in detail what activities take place at various times. This written description is consistent with Mr. Ingram’s testimony. He further explained that during the first week, additional workers on site are limited to five to six contractors staking out sites. During week two of the preparation, the number of contractors might increase to ten, adding electricians and telephone company representatives. Mr. Ingram stated that the number of people and level of activity on site does not increase significantly until

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<sup>3</sup> The Revised Statement of Operations requests that the preparation and clean-up time limits be removed altogether. See Ex. 23(a) at 17. During the hearing, however, the Petitioner represented, through counsel, that it requests six weeks for preparation and three for clean-up. This is consistent with other written evidence, as well. See Ex. 59(a).

three weeks from the event date. During those three weeks, and particularly the last week, activity is quite intense, with lots of people and vehicular movement. The Petitioner's traffic expert provided a more detailed estimate, after the hearing, of the number of people and deliveries during each week of the preparation and clean-up (from Ex. 104):

<b>Weeks before or after the Tournament</b>	<b>Man Power</b>	<b>Deliveries</b>
6 weeks prior	5 people	10 deliveries
5 weeks prior	7 people	14 deliveries
4 weeks prior	15 people	20 deliveries
3 weeks prior	20 people	40 deliveries & 600 volunteers
2 weeks prior	28 people	40 deliveries
1 week prior	30 people	40 deliveries
1 week post	30 people	40 removals
2 weeks post	30 people	40 removals
3 weeks post	15 people	20 removals

The entry "600 volunteers" in the "3 weeks prior" row in the table above refers to brief site visits by volunteers who will assist during the tournament, and who come to the site beforehand to pick up uniforms and credentials. Tr. Nov. 8 at 47.

Mr. Ingram testified that the tournament itself normally runs from Monday through Sunday. Because of inclement weather and flooding, at Avenel the tournament often goes into Monday or Tuesday of the next week. Monday, Tuesday and Wednesday tend to be fairly light spectator days, with about 10,000 to 15,000 people per day, depending on the weather. During those days, the professionals play practice games, sometimes with a group of amateurs who have paid for the privilege of a round of golf with a professional. "Pro-ams," as these games are called, are open to anyone, not just Avenel members. The actual tournament begins at 7:15 on Thursday morning. The entire field of about 150 professional plays on Thursday and Friday. After the first two rounds, the field is reduced to about 75 players, who play on Saturday and Sunday in twosomes, each with a caddy.



## PGA TOUR TOURNAMENT SETUP REQUIREMENTS

We are requesting 6 weeks prior to the event and 3 weeks after the event  
 6 weeks out is not 42 days; it is 34 days as there is no weekend work for the first 4 weeks  
 Of 34 working days there are normally 3 days when weather conditions will not allow work  
 Actually we only have 31 actual days to complete setup

6 weeks out: staking and layout of hospitality structures	5 days
Flooring installation and scaffolding erection	20 days
Advertise/interview tournament staff	14 days
Host organization mobilization	7 days
5 weeks out: temporary bleachers/stadium seating arrive/installation	16 days
Tournament signage installed around the county	5 days
Parking fields mowed	4 days
Electricians on site to set temporary service for temporary structures	30 days
Television fly-over	2 days
Telephone company on site to install temporary phone services	22 days
4 weeks out: temporary office trailers begin to arrive	5 days
TV/broadcast towers arrive from previous tournament	3 days
Crowd Pleasers/temporary rest room facilities arrive	5 days
Tournament staff training	3 days
Merchandise tent construction	17 days
3 weeks out: parking fields mowed	3 days
Hospitality vendor on-site kitchen area construction	14 days
Begin setting temporary trailers	14 days
Volunteer pickup uniforms and credentials	4 days
Temporary structures built on flooring	10 days
Generators/HVAC units arrive	10 days
Temporary charging facility constructed	4 days
2 weeks out: score boards and standards arrive and installed	4 days
Sponsor suite arrives/installed	4 days
Hospitality/concession supplies begin to arrive	7 days
Tournament support equipment arrives	3 days
Soft tops/tents installed on temporary structures	10 days
TV/broadcast towers installed	7 days
Courtesy car deliveries	5 days
Generator/HVAC units installed on all temporary structures	10 days
Install champion banners/flags of nations	8 days

Attendance varies with the weather, with more spectators on the weekends. Mr. Ingram estimates that in his time at Avenel, the highest number of spectators has been about 25,000 to 28,000 people on a Saturday afternoon. He noted that TPC at Avenel hopes to move the tournament, if it comes

back to Avenel, to the early fall, when the weather in the Washington area is less hot, muggy and rainy. He added that TPC at Avenel hopes the crowds will increase if the tournament has better weather, plus the professionals prefer to play on a course that is firm and fast, rather than soggy. Tr. Nov. 8 at 58-59.

After the tournament, Mr. Ingram stated, the first two days may include a quick tear-down for the television broadcaster, who may need to move to another event. The first three to five days after the tournament are quite hectic, with vendors tearing down tents, cleaning up and removing player amenities. Avenel continues to use its staff and the host organization to clean up the debris left behind by 25,000 people. Most of the volunteers are gone by that point. The contractors who put up the tents also take them down. Mr. Ingram estimates there are about 10 to 15 contractors on site in the first four or five days after the event, dropping down to ten after that. Tractor-trailers arrive two days after the tournament to take away the courtesy cars. A few people are on site to remove electrical and telephone connections. After the first few days, the number of people and level of activity on the site are similar to the first three weeks of the set-up period.

Attendance and Volunteers. The original special exception opinion in this case describes attendance as 80,000 to 100,000 people over the course of a PGA TOUR Event, with about 1,200 volunteers during the event. The Petitioner originally sought to increase the number of people permitted on site during the course of the PGA TOUR Event to between 100,000 and 150,000. However, as the Hearing Examiner pointed out during the hearing, the record is bereft of any evidence about the impacts of such an increase. For example, how many additional bus trips would result from an additional 20,000 to 70,000 people? Would the buses run longer hours? What other impacts might there be? Transportation Planning Staff did not analyze this issue in its original memorandum, and apparently was unaware that an increase in attendance had been requested until the issue was raised by the Hearing Examiner. In a supplemental email responding to questions from the Hearing Examiner, Transportation Planning Staff opined that increasing the number of people coming to the site by 50 percent during the PGA TOUR Events would not have a detrimental effect on the nearby road system “as long as the overall

traffic flow is properly controlled by police officers and assisted by the Traffic Operations Office.” Ex. 45. No analysis was provided, however, to support this opinion.

It became clear, during the hearing, that sufficient background data is not available to support modeling of the impact of an increase in attendees. Tr. Nov. 6 at 62. In light of this, and the fact that in Avenel's 20-year history the PGA TOUR Event has never reached the current limit of 100,000 people, the Petitioner withdrew its request to increase the permitted attendance level. *Id.*

The Petitioner continues to request an increase in the number of volunteers permitted during the course of the PGA TOUR Event from 1,200 to approximately 1,500. Neither Technical Staff nor the Planning Board commented on this aspect of the modification request. The Hearing Examiner finds that given the level of activity and large numbers of people on site during a PGA TOUR Event, a 25 percent increase in the number of volunteers would not noticeably increase the level of activity, and might help the level of organization.

### ***E. Timing and Phasing***

The Petitioner's Statement in Support, Exhibit 23(a), anticipated a two-phase implementation of the proposed modification. Golf course renovations and stream restorations were to be in the first phase, and “upland” work, including the clubhouse and the practice facility, in the second phase. Mr. Brogan testified that Petitioner now hopes to begin work on the golf course/stream restoration and the clubhouse at the same time, in early April 2007. Tr. Nov. 6 at 136. This would require obtaining both Board of Appeals approval for the modification and Planning Board approval for the revised site plan before that time. Mr. Brogan indicated that improvements to the entry drive might be put off to a later time.

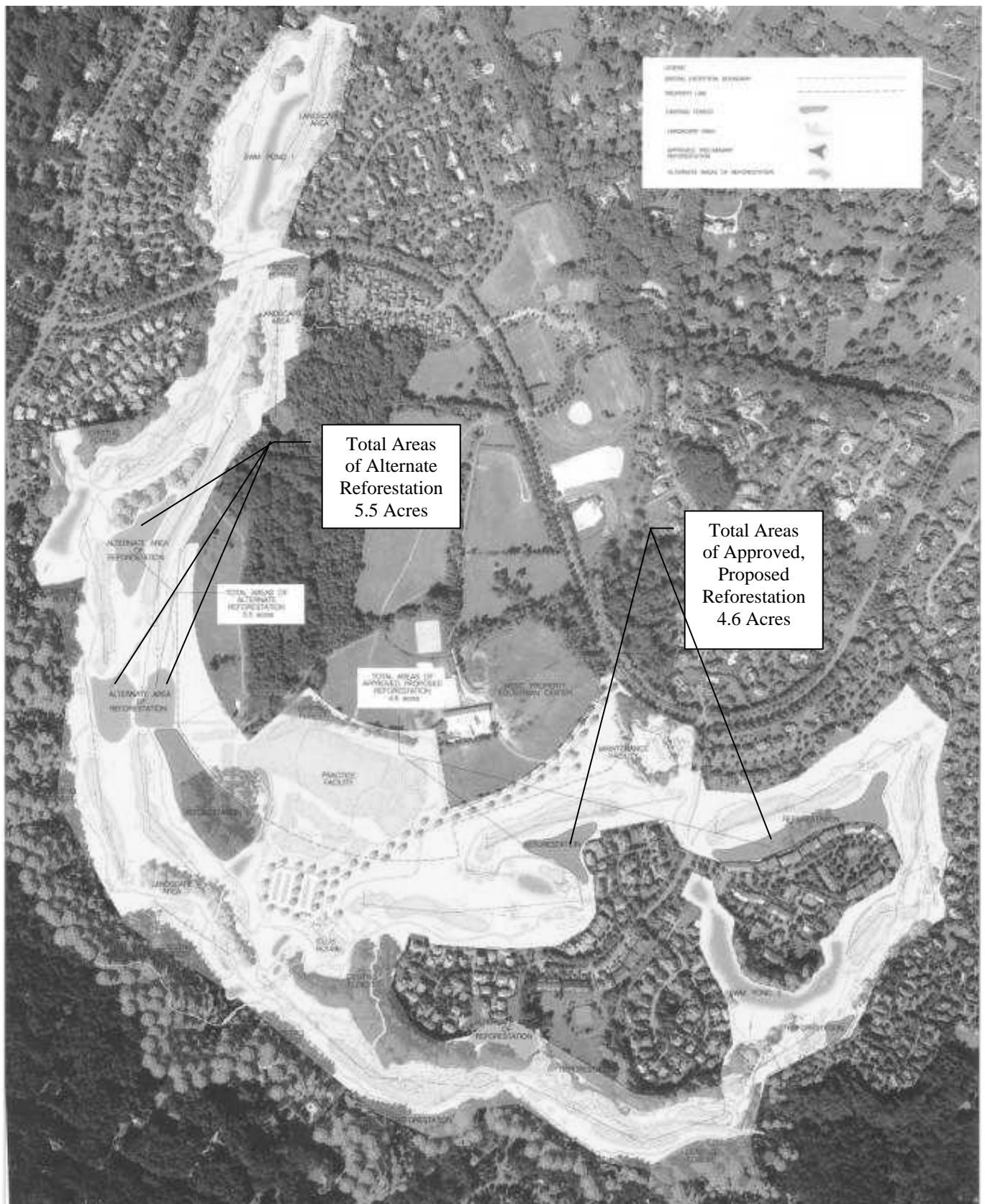
### ***F. Forest Conservation***

Avenel was built before Montgomery County had instituted forest conservation requirements, and its current layout does not conform to the present-day regulations. The changes to the site that the Petitioner now proposes, including the removal of approximately 0.8 acres of forest, require it to conform to forest conservation requirements. The Planning Board approved the Petitioner's preliminary

forest conservation plan on the same day that it voted to recommend approval of this modification petition. The preliminary forest conservation plan provides for approximately 11 acres of reforestation at several locations on the site. The plan engendered some controversy in the community, however, because one of the new forested areas proposed would block the views of the golf course from an area of the Avenel Subdivision where homeowners purchased their properties specifically to get a golf course view. As several mentioned in letters and one in testimony, the prices of their homes were elevated because of the golf course view. Not surprisingly, these homeowners care deeply about the possibility that trees might block that view.

The Petitioner has developed an alternative forest conservation plan in response to homeowner concerns. The alternative plan would replace approximately 4.6 acres of reforestation adjacent to existing homes with 5.5 acres of reforestation elsewhere on the site, in locations that would not block existing views of the golf course. Mr. Snyder testified that in his view, the environmental value of the approved forestation and the alternative plan are functionally equivalent. In the interest of time, the Petitioner chose not to bring the alternative forest conservation plan to the Planning Board, as a second preliminary forest conservation plan, before the modification is considered by the Board of Appeals. The Planning Board will have approval authority over the final forest conservation plan in conjunction with its site plan review. The Petitioner seeks approval for the modification from the Board of Appeals, therefore, with the option to use either forest conservation plan. It has agreed, however, to a condition of approval that would require it to present the alternative plan to the Planning Board and its staff as its proposed final conservation plan. The alternative plan was submitted to Environmental Staff at the MNCPPC after the hearing, who found the alternative plan acceptable. See Ex. 105. Environmental Staff notes that there is adequate acreage to address forest conservation requirements on site, and that details can be worked out as part of the final forest conservation plan submission during the Planning Board's site plan review. See *id.* The map on the next page shows the approved preliminary forest conservation plan, with the alternative reforestation areas superimposed.

## Forest Conservation: Approved Preliminary Plan and Alternative Plan, Ex. 68



### ***G. Traffic and Parking***

Avenel generates two types of traffic impacts: (a) day-to-day trips generated by employees and golfers; and (b) truck, bus and car traffic generated during the preparation and clean-up for a PGA TOUR Event and the event itself. The potential effects of the proposed modification on traffic connected with the annual PGA TOUR Event are discussed in Part II.D.4 above. Potential impacts of day-to-day traffic are discussed below.

Although the proposed modification would lengthen slightly the hours when the golf course is open, nothing in the record suggests that the changes in operating hours would increase the number of rounds of golf that are played or the number of golfers on site on a day-to-day basis. The original special exception approval provides for a maximum of 220 rounds of golf per day (see Ex. 3(aa)), and there has been no request to increase that. The evidence suggests that the slightly longer hours would be a convenience to members of the club, but would be more likely to spread out the number of trips golfers make to and from the site, than to increase their number.

Elements of the proposed modification that would directly affect day-to-day traffic are (i) the request to increase the number of employees from today's total of 50, with 40 on site at one time, to a total of 85 full-time employees, with no more than 50 on site at one time; and (ii) the request to permit caddies. The Petitioner conducted a traffic study, per the Planning Board's Local Area Transportation Review ("LATR") Guidelines, which examined the impact of the increase in employees on site traffic at three nearby intersections: the main entrance on Oaklyn Drive and one intersection each to the north and south on Oaklyn Drive, at Falls Road and at Bradley Boulevard/Persimmon Tree Road. See Ex. 90. Traffic counts conducted in connection with this study indicate that Avenel generates approximately 700 daily trips during typical weekday operations, 724 trips on Saturdays and 773 on Sundays. Petitioner's traffic engineer estimated that increasing the number of employees on site at any one time from 40 to 50 would lead to 11 additional trips during the morning peak hour and 15 during the evening peak hour. See *id.* at 8. The study found that the three intersections examined operate within the critical lane volume ("CLV")

that the Planning Board has established as the congestion standard for the Potomac planning area, and would continue to do so with the proposed increase in employees from 40 on site at one time to 50. Both the Petitioner's traffic engineer and Technical Staff concluded, on this basis, that the proposed increase in employees would not have an adverse effect on area roadways.

Petitioner's traffic engineer considered the ten additional employees on site at one time, but (with Technical Staff's approval) did not consider the potential impact of 85 employees coming to and from the site during the course of the day. Mr. Ingram testified that employee trips are spread over a considerable length of time, with some employees arriving as early as 6:30 p.m. and leaving mid-afternoon, while others arrive in the afternoon and work into the evening. Moreover, the traffic study shows that two of the intersections studied operate with very low CLV's compared to the Potomac Policy Area standard of 1,475: CLVs are under 300 at the site entrance, and under 700 at the Oaklyn Drive/Bradley Boulevard/Persimmon Tree Road intersection. Even at the busiest intersection of the three, Oaklyn Drive and Falls Road, CLVs are no higher than 1066, more than 400 counts below the congestion standard. In light of this, the Hearing Examiner considers it safe to conclude that the total impact of 85 trips over the course of a 12-hour day, many of which would likely occur outside the weekday peak periods, would not strain the capacity of the local road network.

Subsequent to the submission of the traffic study and the issuance of the Staff Report, the Petitioner's traffic engineer prepared a supplemental letter analyzing the impact of adding caddies to the day-to-day site traffic. See Ex. 59(b). This letter reports that the Petitioner estimates a maximum of 30 caddies on a weekday and 40 per weekend day, in both cases spread out over about 12 hours. Based on this information, the traffic engineer estimated that caddies would generate five or fewer additional trips during the weekday morning peak hours. Given that the highest CLV measured at any of the three intersections studied was more than 400 CLVs below the congestion standard for the area, the Petitioner's traffic engineer concluded that the few additional trips generated by caddies would not have a significant impact on weekday CLV levels, and would have only a negligible impact on weekend traffic conditions in the area.



### ***H. Construction Access and Staging***

The Petitioner presented a map showing the routes it plans to use for construction access. See Ex. 75. (It has not been reproduced here due to limited legibility in black and white.) The two main access points would be the main entry drive for the golf club, off of Oaklyn Drive, and an entry point through WSSC property farther north on Oaklyn Drive. The bulk of the construction equipment and materials would be brought on site via these two access points, and would be marshaled in a temporary construction staging area on the golf course, between a large forested area and hole 2. From there, heavy equipment would be able to make its way through the golf course to nearly every hole. The Petitioner submitted a written exhibit describing the extent to which the proposed modification would require construction access over local roads. See Ex. 92. As described by Mr. Brogan and in Exhibit 92, the only portion of the golf course where the Petitioner would need to bring in heavy equipment (such as excavators and back dumps) over a local road is in the far northern part of the course, which is physically separated from the rest of the course by Oaklyn Drive. For the two holes located in this part of the course (holes 4 and 5), the Petitioner anticipates using Avenel Farm Drive to bring in heavy and equipment and materials. Heavy equipment would arrive via a flatbed trailer, would stay in this part of the site until it is no longer needed for holes 4 and 5, and would then be removed. With regard to materials, the Petitioner estimates that reconstructing holes 4 and 5 would require approximately 59 truckloads of aggregate material (greens mix, made up of sand and peat moss, plus gravel and bunker sand), arriving over a period of two to three weeks, approximately 20 truckloads of sod arriving over the space of about a week, and approximately 20 truckloads of asphalt paving material (for golf cart paths). The “truckloads” referred to would be large dump trucks, which Mr. Brogan described as not quite as big as tractor trailers. Tr. Nov. 8 at 7.

The Petitioner also hopes to use some local roads near the southeastern part of the golf course to bring in materials for holes 12 and 13.<sup>4</sup> Heavy equipment would reach these holes from the on-site construction staging area, but the Petitioner hopes to bring the materials in via the local roads. These materials are estimated to consist of approximately 65 truckloads of aggregate material and 13 truckloads of sod.

A principal concern raised by individual community members and the Avenel Community Association, Inc., which represents the Avenel Subdivision, is noise, dust and other potential impacts on the neighborhood during construction of the proposed improvements. To allay these concerns, the Petitioner points to the Construction Access and Staging map above. In addition, Mr. Brogan testified and Petitioner's counsel represented that the Petitioner intends to comply with all relevant county regulations, including the County's Noise Ordinance, and will pay attention to details, like avoiding mud on the streets, to make this "as painless as possible for everybody." Tr. Nov. 6 at 134, 137. Petitioner's counsel stated during the hearing that a statement would be put into the record describing the Petitioner's intention to abide by all relevant construction-related rules and regulations, but the only construction-related statement that was submitted is Exhibit 92, which addresses solely the Petitioner's intended use of local residential streets as minor construction access points. To ensure that the Petitioner is bound by its testimony regarding construction activities, and for ease of enforcement if the need arises, the Hearing Examiner has crafted recommended conditions of approval regarding the construction process that are based on both Exhibit 92 and hearing testimony.

### ***I. Community Participation***

The record contains two letters from the Avenel Community Association, Inc. which, overall, express support for the proposed modification. The letters note that the Association speaks

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<sup>4</sup> On the first day of the hearing, Mr. Brogan identified Beman Woods Way, near the 15<sup>th</sup> hole, as one access point. He also mentioned an existing easement off of Willow Gate Lane and "Mountain Gate," a street that the Hearing Examiner has not located on local maps. On the second hearing day, Mr. Brogan referred to Autumn Gate Lane, which Exhibit 92 identifies as the access point for holes 12 and 13, in the southeastern part of the site. The Hearing Examiner concludes that the Petitioner would need access via some of the roads near the southeastern part of the site, including but not limited to Autumn Gate Lane.

only for itself, and is sensitive to the impact that modifications may have on individual homeowners. See Exs. 31 and 103. The Association supports the alternative forest conservation plan that the Petitioner has proposed in response to concerns about the approved forest conservation plan blocking golf course views. The Association's principal concern is with impacts on the community during construction. The Association intends to rely heavily on the full-time staff member that the Petitioner has promised to hire to act as a liaison between contractors, the Association and individual Avenel Subdivision homeowners. It also relies on the Petitioner's stated commitment to adhering to county noise regulations and taking other reasonable measures to limit disturbance to adjoining property owners and other local residents. The Association notes that the limited access the Petitioner desires over Avenel Subdivision streets would require coordination of time and logistics, as well as a temporary construction easement addressing restoration of property.

The record contains additional letters in support from then-Governor of the State of Maryland, Robert L. Ehrlich, Jr., then-County Executive Douglas M. Duncan, and The First Tee, a non-profit organization that provides young people of all backgrounds in Montgomery County with the opportunity to develop, through golf and character education, life-enhancing values such as honesty, integrity and sportsmanship. See Exs. 96, 97 and 77.

The issue that drew much of the community interest in this case is stormwater management. The erosion and flooding problems at Avenel do not stop at the edge of the golf course, but continue all along the course of Rock Run and its tributaries. The Brickyard Road Citizens Association and members Charles Doran, Claudia Nagan and Michael Nagan, the Mazza Woods Citizens Association and members Daniel and Yon Wacker, and John W. Dix, a resident of the Avenel Subdivision, expressed concerns that the stream restoration proposed in conjunction with the present modification could involve channelization or deepening of the Rock Run streambed that would lead to even faster-flowing water and more problems with flooding and erosion downstream of the golf course. See Exs. 25, 28, 42 and 88. As described in the Summary of Hearing, Part III of this report, Mr. Dix has particular concerns about stormwater run-off from Avenel Park, which emerges from a large storm drain in an open area behind his

home. Mr. Dix learned during the hearing that this stormwater flows onto the golf course and into a retention pond. Representatives of the two citizens associations mentioned above also attended the hearing, and learned that if successful, the stream restoration and relocation proposed in conjunction with this modification would improve environmental conditions along Rock Run, within the borders of the golf course, and would have only beneficial impacts on flooding and erosion downstream.

The record includes six letters addressing the forest conservation plan that was approved by the Planning Board, which would result in blocking golf course views from a row of homes behind the 15<sup>th</sup> and 17<sup>th</sup> greens. See Exs. 47-52, 100. As discussed in Part II.F. above, the Petitioner has proposed an alternative forest conservation plan that would preserve existing golf course views. The recommended conditions of approval would require the Petitioner to seek approval of this alternative forest conservation plan during site plan review.

Peter S. Kimmel, a resident of the Avenel Subdivision, writes about concerns related to noise and traffic during the annual PGA TOUR Event. See Ex. 26. Mr. Kimmel states that although the police and others move traffic as well as possible during a tournament, “the roads in this community were not designed to support roughly 50 times the normal daily traffic. Arriving home or leaving the community at certain hours during a tournament can easily add 30 minutes to a ten-minute trip to Potomac Village.” Ex. 26. Mr. Kimmel requests that no expansion in tournament attendance be approved unless all additional attendees will arrive by buses arranged by the tournament. The Petitioner has since withdrawn its request to increase the number of attendees permitted. Mr. Kimmel also voices concern about noise during construction, requesting that the Petitioner be required to adhere to county noise regulations and limits on hours of operation for construction activities. As discussed in Part II.H. above, the Petitioner’s commitment to adhere to such standards is reflected in the recommended conditions of approval. Mr. Kimmel requests, in particular, that the Board of Appeals ensure that no residential street in the Avenel Subdivision may be used for parking by any construction-related vehicles. This is also reflected in the recommended conditions of approval.

David Guinn, who apparently resides quite close to or on the golf course, wrote with a particular concern about bridge construction. See Ex. 34. He states that several years ago, bridges at the 12<sup>th</sup> green and just beyond the 13<sup>th</sup> tee were rebuilt with materials that are very noisy with each crossing. He requests that any bridge work done in connection with the proposed modification not follow the same construction techniques, to avoid these noise problems.

Thomas and Linda Podesta, residents of the Avenel Subdivision who live near hole 13, wrote about their concerns, discussed in Part II.D.1. above, with regard to the proposed reconfiguration of hole 13. See Ex. 53. Two of their neighbors, Nan and Manning Muntzing, wrote to concur with the Podestas' concerns. See Ex. 54. As noted in Part II.D.1, the Petitioner has prepared an alternative design for hole 13 to respond to the Podestas' concerns, and proposes to work out which alternative is preferable during site plan review.

The only letter that opposes the proposed modification outright is from Walter E. Groedel, a resident of the Avenel Subdivision who states that increasing the number of employees from 50 to 85 "seems excessive and only adds to traffic and pollution." Ex. 46. Mr. Groedel further argues that the PGA TOUR Event already clogs the roads for five days, and that increasing the number of days and attendees "ruins the life of Avenel residents." Mr. Groedel's opinion regarding the number of employees is outweighed by substantial, probative evidence submitted by the Petitioner demonstrating that the increase in employees would not have a significant or adverse effect on area roadways. The Petitioner has withdrawn its request to increase the number of attendees. As for the number of days the annual PGA TOUR Event may run, the Hearing Examiner finds, based on the preponderance of the evidence, that the difference between the current 5-day tournament and a 7-day tournament is unlikely to result in significant adverse impacts on the neighborhood beyond those that are inherent in hosting such an event, which has been permitted since the inception of the special exception.

### III. SUMMARY OF HEARING

#### *A. Applicant's Case in Chief*

1. Mike Snyder, engineer. Tr. Nov. 6 at 13-70.

Mr. Snyder was designated an expert in civil engineering and site planning, with the weight to be given to his testimony on land planning issues (expert v. lay witness) to be determined after hearing the testimony. Having considered Mr. Snyder's testimony, the Hearing Examiner finds that he has considerable knowledge about land planning issues, although neither his responses on voir dire nor his testimony concerning inherent and non-inherent adverse effects displayed a detailed understanding of the standard of evaluation prescribed for special exceptions in this County, as interpreted by the Board of Appeals. Accordingly, the Hearing Examiner places considerable weight on Mr. Snyder's testimony as an expert in engineering and site planning, but does not consider him to be an expert in land planning. Given the lack of planning education or non-engineering, land planning experience on his resume, in this Hearing Examiner's view, Mr. Snyder would need to demonstrate a higher level of actual knowledge to be considered an expert in land planning.

Mr. Snyder's firm did the original engineering and layout for the Avenel Golf Course and also the Avenel Subdivision. With regard to the present application, Mr. Snyder's firm did a property survey and prepared the majority of the exhibits, including those related to natural resources, forest conservation and stormwater management.

Referring to a surrounding neighborhood map, Mr. Snyder described the location of the subject property and its principal physical features and surroundings. He agreed with Technical Staff's recommendation regarding the appropriate neighborhood to consider for this application. Tr. Nov. 6 at 21. Mr. Snyder testified that the proposed modification would comply with the standards and requirements applicable to this category of use under Section 59-G-2.24 of the Zoning Ordinance. These include maximum building coverage, minimum setbacks, and minimum road frontage. Mr. Snyder opined that the golf course, with the proposed modification, would have no adverse impacts on the surrounding community. Tr. Nov. 6 at 27. He noted that the golf course has already been approved as a special

exception, indicating that it was considered an appropriate use. Mr. Snyder identified as a possible non-inherent adverse effect the fact that Avenel has approval for a PGA TOUR Event, but he noted that in previous decisions that was considered appropriate.

Mr. Snyder testified that when Avenel was originally approved in 1984, it was part of an overall plan including the Avenel Subdivision, and a number of houses were to be located a bit less than 100 feet from the field of play. (This testimony was in response to Section 59-G-2.24(d), which specifies that all golf course playing surfaces must be set back at least 100 feet from property lines adjoining a one-family use, unless the Board finds that landscaping, screening, fencing or other measures can mitigate the adverse effects on the adjoining residential use.) He then summarized the data in Exhibit 59(d), which compares the number of homes that are currently less than 100 feet from the field of play to the number that would be less than 100 feet away after implementation of the proposed modification, concluding that the field of play would move closer to some homes and farther from others, with a net result of eight fewer homes within 100 feet of the field of play. Mr. Snyder noted that while some residents of the Avenel Subdivision have expressed concerns about reforestation potentially blocking their views of the golf course, or about the potential for the re-design of one hole to increase the number of balls landing in someone's yard, no one in the community has raised a specific concern about homes located less than 100 feet from the play area. He stressed that the golf course and the Avenel Subdivision were designed to be compatible with one another, and would continue to be with this modification.

The Petitioner's counsel, Stephen Kaufman, stated that he was counsel in the original special exception application for this property, and he recalls both the Board of Appeals and the Planning Board reviewing an overall site plan that showed the location of all of the proposed lots and their relationship to the course. Tr. Nov. 6 at 59.

Turning to the Master Plan, Mr. Snyder opined that the proposed modification would be consistent with the Master Plan recommendations for this property. He observed that the Master Plan does not specifically identify the Avenel property, but it recommends retaining the existing RE-2C zoning



in the area. Mr. Snyder interprets that as recognizing the property to exist in its current state and reinforcing the existing use.

Describing the changes proposed for the golf course, Mr. Snyder stated that the overall layout would see very little change. The access road would be improved to allow better traffic circulation during the PGA TOUR Event, the clubhouse would be enlarged from 33,000 square feet to 37,000 square feet, and there would be significant change in the location and layout of the practice area. The major change, Mr. Snyder reported, would be to some of the environmental features. He noted that Rock Run and its tributaries are in very bad shape and highly eroded, causing significant problems for the operation of the golf course and the environment in general. Due to the severe erosion of the stream bed, even a small storm leads to a tremendous amount of flooding on the golf course. During a storm the water moves through the stream at a high velocity, causing more erosion, degrading the stream channel and probably dumping material on downstream properties. The proposed modification includes plans to reconstruct the stream channels on several of the tributaries. This reconstruction is hard to see on the scale of the submitted plans, but would be very significant for the environment and for golfers. It would increase flood plain storage capacity in the form of wetlands, so that the run-off from small storms would slow down and stay within the stream channel. A total of approximately 11 acres of wetlands would be created. Tr. Nov. 6 at 50. Mr. Snyder noted that stream restoration would also involve adding vegetated stream buffers in some areas where currently, the golf course fairway runs right up to the stream channel. Tr. Nov. 6 at 39-40.

Mr. Snyder noted that when Avenel was approved, the County did not have a forest conservation law. Currently, there is very little forest on site, about 29 acres out of 260 total, which is not enough to meet the minimum forest conservation threshold under today's law. As a result, the proposed modifications include reforestation and afforestation. To satisfy current forest conservation requirements, Mr. Snyder reported, the Petitioner would be required to create 11 acres of forest. He noted that the Planning Board approved a preliminary forest conservation plan in connection with the proposed modification. Residents of the Avenel Subdivision have complained, however, that some of the plantings

shown on the preliminary forest conservation plan – specifically, afforestation proposed near holes 15, 16 and 17 – would block their valuable views of the golf course. In response, the Petitioner proposed an alternative forest conservation plan at the hearing. This plan would remove 4.6 acres of reforestation near holes 15, 16 and 17 and replace it with 5.5 acres of reforestation in other areas of the golf course, where it would not block anyone's view. Tr. Nov. 6 at 47-48. One of the Petitioner's alternative reforestation areas would be near holes 11 and 12, to the south of a large residential area. Mr. Snyder stated that the homes adjacent to this proposed reforestation area would not lose any views because there is already existing forest between them and the golf course. In addition, they are at a significant elevation above the golf course. Tr. Nov. 6 at 54.

Mr. Snyder stated that he has no reason to believe the alternative reforestation areas would not be acceptable to Environmental Staff at the MNCPPC. [Per a post-hearing email, Environmental Staff does find the alternative reforestation areas acceptable.] He noted that none of the reforestation areas proposed for removal are near Rock Run or its tributaries, so eliminating them would not affect stream valley buffering. Mr. Snyder considers the alternative areas equally valuable, from a forest conservation standpoint, as the areas that are proposed for removal from the approved preliminary forest conservation plan. *Id.* at 49.

Applicant's counsel acknowledged that the Petitioner cannot commit to implementing the alternative forest conservation areas, because the Planning Board has the final say in approving a final forest conservation plan. He represented, however, that the Petitioner will commit to making a proposal to the Planning Board to implement the alternative areas.

Mr. Snyder further testified that the proposed modification does not propose any new lighting, and that the modified golf course would continue to be served adequately by all major utilities. He opined that the modification would be in harmony with the general character of the existing neighborhood; would not have a detrimental effect on the peaceful use and enjoyment or economic value of surrounding properties, but rather would be of tremendous positive benefit to surrounding areas; would not cause any objectionable noise, vibrations, fumes or dust, except potentially during construction; and would have no

detrimental effect on the health, safety or security of the general area. Mr. Snyder noted that implementation of the modification would not required re-subdivision of the property, but it would require Planning Board approval of a revised site plan and a final forest conservation plan. Finally, Mr. Snyder opined that the use as proposed would be compatible with surrounding development, and that the proposed improvements would enhance the natural environment with regard to erosion and preservation of natural vegetation.

2. James C. Triola, Petitioner's representative. Tr. Nov. 6 at 70-102.

Mr. Triola is Vice-President of Business and Legal Affairs for the PGA Golf Course Properties, which is the parent company of TCP at Avenel, Inc., the owner of the Avenel golf course. He is also a vice president of TPC at Avenel, Inc. Mr. Triola testified that the work on the proposed modification has been done under his supervision. To explain the corporate structure, Mr. Triola stated that the PGA TOUR, Inc., the ultimate parent of all the entities involved here, is a Maryland corporation. PGA TOUR Golf Course Properties is a Florida corporation that is a subsidiary of PGA TOUR, Inc., and TPC at Avenel, Inc. is a subsidiary of PGA TOUR Golf Course Properties.

Mr. Triola stated that the Avenel golf course was one of the first stadium golf course facilities, meaning a tournament site that is designed to provide spectators at professional golf tournaments with viewing, hospitality, traffic flow, etc. The golf course was completed in 1985 and held its first event in 1987. He stated that at the time of its development, the course was intended to buffer the adjacent community from the effects of a water treatment plan that was planned for property north of the course that is owned by WSSC. Applicant's counsel interjected that the water treatment plant proposed at that time was recently removed from the County's Capital Improvement Program.

Mr. Triola noted that the infrastructure of the Avenel golf course -- greens, fairways, irrigation system, etc. -- has aged, and needs to be replaced. He added that stream degradation and flooding need to be addressed because they are affecting the appearance of the golf course, and the flooding makes it very difficult to run a first class golf facility, especially one that is intended to host a professional golf tournament. The risk that any significant rainfall may cause flooding on play areas

makes it very difficult to plan an event. In addition, Mr. Triola observed, the game of golf has changed over the last 20 years, so changes to the course are needed to make it more competitive for both members and professionals. One change is that walking a golf course, which was “something that you didn’t do” 20 years ago, has become more popular with increased interest in physical exercise. The modifications proposed here are intended to address operational elements that should be part of a private, high-end golf course to be competitive with other facilities.

Mr. Triola noted that the proposed modification would make the hours of operation more consistent with what is typical of golf courses in the area. He noted that the number of employees has not varied significantly, over the years, from the original approval. There are instances, however, like the PGA TOUR Event, where additional employees on site may be necessary. Mr. Triola stated that although golf clubs are for-profit organizations, PGA TOUR events are run by not-for-profit groups, and the net revenues (after a certain amount for the club) go to a designated charity. He stated that Avenel, like other golf courses, also periodically hosts fundraisers for non-profit groups, allowing such groups to reserve the entire course for a “golf outing.” These outings often involve a “shot gun” start, with people starting all at one time on all 18 holes. This gets the maximum number of people through the course in a short time. These events also may provide food, beverages and entertainment, which requires a certain number of employees on site. Mr. Triola estimated that as many as 150 golfers may attend such an outing, plus a few volunteers, but typically there are no spectators. He noted that Avenel has never had complaints about these outings, and that they take place at virtually every golf club in the country.

Another change that Mr. Triola mentioned is that caddies, who were not viewed favorably 20 years ago, are now considered an important option for a “premium” golf experience. Typically, a single caddie will ride with a foursome of golfers and explain to them the lay of the land on that particular hole, advising them where to hit their tee shots and what areas to avoid. Mr. Triola stated that caddies can actually speed up play, because players will spend less time looking for their balls. In addition, caddies can steer players away from sensitive areas and out-of-bounds markers. Caddies may also lead to

reduced reliance on carts, because the caddie may be responsible for the equipment, making it more likely that the players will walk.

Mr. Triola testified that at the beginning of this process, the Petitioner had a few meetings with WSSC to let them know about the plans for the golf course and make sure there were no issues that needed to be resolved. These meetings are reflected in a letter in the record from WSSC, which states its acceptance of the proposed changes. See Ex. 24. The Petitioner and its consultants also met with representatives of the Avenel Homeowners Association, and more recently with representatives of Mazza Woods, Brickyard and River Falls, as well as individual community members. Mr. Triola stated that the Petitioner considers itself part of the community, and intends to continue these communications, as it tries to not only do what is in the best interest of the golf course, but also take into account the impact on the community.

Mr. Triola agreed, on behalf of the Petitioner, to operate consistently with all conditions imposed by the Board, if the modification is granted. Tr. Nov. 6 at 93. He noted that the Petitioner is not in agreement with the condition recommended by Technical Staff that would limit the set-up period for the PGA TOUR Event to three weeks. The Planning Board changed that recommended condition to six weeks, with the substantial work to be done within three weeks on either end. Mr. Triola noted that the PGA TOUR organization conducts somewhere between 40 and 50 events each year, at TPC sites and other locations, so the major equipment travels around the country. He stated that in the last 20 years, the standard for hospitality at these events has changed, so that a set-up that used to take two weeks now takes much longer. The tournaments are hosted by a local charity, which wants to maximize its fundraising by selling hospitality tents and grandstands, which have become fairly sophisticated. Mr. Triola emphasized, however, that the activity level is not intense for the entire six weeks. It starts off slowly and gradually becomes more intense as the tournament date nears. A lot of the early work is setting up infrastructure – electric lines, site pads, etc. – which does not require a lot of people on site. Much of the equipment, like the tents, is not available six weeks out because it is in use at another

tournament. Mr. Triola described a six-week set-up period as the standard that is used today for tournaments. Tr. Nov. 6 at 98.

Mr. Triola testified that the Petitioner has hired a very experienced project manager for this redevelopment, and has secured an access agreement with WSSC to minimize construction impacts on the community. He noted that Avenel intends to have a team of people on site and a contact point for the community, in case problems arise, to be as responsive as possible. Finally, he agreed that the Petitioner will be bound by all written and oral testimony given on its behalf.

3. Richard Brogan, project manager. Tr. Nov. 6 at 103-149; Nov. 8 at 3-26.

Mr. Brogan works for PGA TOUR Golf Course Properties as a senior project manager with construction services. His job involves coordinating and facilitating the development and implementation of plans for the construction of new TPC golf courses or renovation of older ones. He has a degree in turf grass management and has worked for the PGA TOUR for over ten years, mostly as a project manager. He has also been a golf course superintendent for the PGA TOUR and a number of developers.

Mr. Brogan agreed with Mr. Triola's testimony that Avenel has grown rather tired and old. He described the primary purpose of the proposed modification as rebuilding the golf facility, including building all new greens, rebuilding the tees, installing new irrigation, re-grassing the fairways and installing fairway drainage. Tr. at 106. Mr. Brogan explained that greens are built in layers, starting with drainage cut into the sub-grade of the green, then a four-inch gravel layer, then 12 to 14 inches of growth material, or greens mix (sand and peat moss, designed to grow grass that drains quickly and stays very firm). Tr. Nov. 6 at 148-49. The grass grows on top of that mix. Mr. Brogan stated that a large part of the project that is not typical of golf courses is the creek and stream restoration. *Id.* at 106. Other improvements include re-designing holes 9 through 13 to make them more competitive, and upgrading the practice facility and short game area. Mr. Brogan noted that on a modern golf course, the practice area is more than just a place to hit balls. Today, it should be a place to practice all facets of the game, and this modification would allow Avenel to build a modern practice facility. Mr. Brogan noted that the clubhouse would get a major renovation with the proposed modification, including a complete interior and exterior

renovation, improvement to the arrival area, and expansion of the food and beverage area by about 3,600 square feet.

Mr. Brogan described in some detail the proposed re-design of holes 9 through 13. Tr. Nov. 6 at 108-114. The changes would result, among other things, in removing one hole from the area adjacent to the stream. Tr. Nov. 6 at 113. Mr. Brogan stressed that the stream has been incorporated in the design for the new holes with substantial buffering and wetlands, in an effort to keep the fairways out of the floodplain. He described the basic construction sequence as follows: strip the grasses off the fairways and any area to be filled; remove sediments from the stream bottom, placing them on the fairway to raise the grade, and regrade the stream to improve capacity; and revegetate the fairways and the stream area.

Mr. Brogan described the proposed improvement to site access, which would involve widening the access road to a 30-foot paved width from the existing 24 feet, and adding a rotary bus turnaround area. This would facilitate the flow of traffic with buses dropping off spectators during a PGA TOUR Event. Mr. Brogan stated that spectators and others who have a permit to park on-site during a PGA TOUR Event use a grassy area owned by WSSC, just north of the practice field. He noted that professional golfers, caddies and tournament officials use the main entrance drive to reach the WSSC parking area. Spectators use other entrances, across WSSC property.

Mr. Brogan described the renovations proposed for the clubhouse, which include a large stone patio and new dining areas overlooking the 18<sup>th</sup> hole. He also read into the record a statement written by the project architects that describes the exterior renovations in some detail. Tr. Nov. 6 at 127-28.

Using a construction access exhibit, Mr. Brogan described the major access and egress routes that would be used during the renovation process. The primary access point for construction vehicles would be the main club entrance off of Oaklyn Drive, which would lead to the clubhouse and, via a road crossing through WSSC property to the north, a construction staging area. Most of the equipment and materials would be stored in the construction staging area. Mr. Brogan noted that WSSC has



approved an additional access point across its property, farther north on Oaklyn Drive. He stated that the Petitioner would need occasional access to local roads to reach the far northern end of the golf course, north of Oaklyn Drive, and to reach some of the holes at the far southern/eastern end of the course. Petitioner's counsel emphasized that the Petitioner plans to make every effort to minimize disturbance on residential streets. Tr. Nov. 6 at 134. Mr. Brogan stressed that the Petitioner would make sure it abides by all local rules and regulations, and pays attention to details like washing down the trucks to avoid mud on the streets, so the process is as painless as possible for everyone. Tr. Nov. 6 at 137.

Mr. Brogan explained that the Petitioner plans to use to residential areas to bring materials on to the site. Tr. Nov. 8 at 6. The first is Avenel Farm Drive, at the very north of the site, above holes four and five, which would be used to bring materials and mobilize equipment from those two golf holes only. Materials would include approximately 59 truckloads of aggregate, consisting of greens mix (sand and peat), gravel and bunker sand. These loads would typically come in over time, but could occur over a period of two to three weeks. They would arrive in tri-axle dump trucks, which Mr. Brogan described as smaller than a tractor trailer, about the size of a box truck. This area would also need about 20 loads of sod, which would arrive over about a one-week period towards the end of the construction process, and about 20 truckloads of asphalt to replace and pave golf cart paths, which would arrive over about a one-week period right before the sod. Mr. Brogan explained that Avenel Farm Drive would be the best access point to bring heavy equipment, such as bulldozers, on and off the site for use on holes four and five. That equipment would come in on a trailer and would stay on site until the end of the construction process for those two holes, then it would be taken out on a trailer. Mr. Brogan explained that heavy equipment would have to brought on site separately for these two holes because they are physically isolated from the rest of the course by Oaklyn Drive. Tr. Nov. 8 at 12.

Another residential street that Mr. Brogan described as necessary for site access is Autumn Gate Lane, near holes 12 and 13 (southwestern corner of the site). Tr. Nov. 8 at 11. The Petitioner would have to request permission to use that road, which is private. Assuming that access is granted, Autumn Gate Lane would be used just to bring in materials. Mr. Brogan estimates this access point would be used

for about 65 truckloads of aggregate materials (greens mix, gravel and sand) and 13 truckloads of sod. He anticipates no need to bring heavy equipment in through Autumn Gate Lane, because holes 12 and 13 can be reached from the main construction staging area.

Regarding timing, Mr. Brogan testified that the Petitioner hopes to start construction on the proposed golf course renovations, including stream restoration and reforestation, in early April 2007. Tr. Nov. 6 at 136. This would require obtaining both Board of Appeals approval for the modification and Planning Board approval for a revised site plan before that time. Mr. Brogan stated that renovation of the clubhouse could be postponed if necessary, but at present, work is scheduled to begin on the clubhouse at the same time as the golf course. He suggested that improvements to the entrance drive could be put off to a later time. Mr. Brogan acknowledged that his description of the phasing, which places all golf course improvements in a single phase, is a change from the phasing that was described in the Petitioner's Statement in Support, Exhibit 23(a). The latter divided golf course improvements into two parts, with most work in the first phase and "upland" work, including the practice facility and the clubhouse, in a second phase.

Mr. Brogan described the changes proposed to the practice facility, which is located north of the clubhouse and south of the WSSC equestrian facility. It would become a state-of-the-art facility with a larger main tee area, a short game area (for practicing shots from 60 yards or less to the green), an area to practice hitting out of bunkers (sand traps), and putting greens. It would also have a separate practice area for professional golfers and golf lessons. The practice facility would remain within the land area that it currently occupies, on WSSC property covered by an easement.

The Hearing Examiner pointed out that the Staff Report and its attachments described the area to be disturbed in connection with the proposed modification variously as 90 acres or 125 acres. Mr. Brogan clarified that between 120 and 125 acres of land are expected to be disturbed. Tr. Nov. 8 at 3.

Two Avenel Subdivision homeowners submitted into the record a letter voicing a concern that the proposed alignment for hole 13 could lead to an increase in stray balls landing in residents' yards. See Ex. 53. They requested that a different alignment be considered, with the line of play leading players

to hit the ball away from the direction of the homes. Mr. Brogan responded to this concern by presenting an alternative routing plan for hole 13, which he and the golf course architect believe would be workable on the site. See Ex. 93; Tr. Nov. 8 at 13. Mr. Brogan explained that the routing currently proposed would place the landing point for the hole on the left side of the stream, which could lead golfers to aim to the left from the tee, in the direction of nearby homes. The alternative would change the tee alignments and place the fairway to the right of the stream, so the direction of play would be more away from the nearby homes. Mr. Brogan noted that this portion of the stream is intended to be restored and its location adjusted as part of the stream restoration plan, so there is some leeway in how that is accomplished. *Id.* at 17. He emphasized that either the current proposal or the alternative would be acceptable to TPC at Avenel. If the modification is approved, the Petitioner plans to work out the details of each alternative during the site plan review process before the Planning Board. Mr. Brogan observed, moreover, that while the plan view suggests that the current proposal could create stray ball problems, he expects that in actuality, in the field, the lake between the tee and fairway on the current proposal would tend to make people shoot to the right, away from the nearby homes. *Id.* at 18. In addition, the housing is at a considerably higher elevation than the elevation proposed for the tee, and is screened by vegetation.

Mr. Brogan provided some clarification about a “potential water feature” referenced in the Petitioner’s Statement in Support. See Ex. 23 (a) at 9; Tr. Nov. 8 at 21. He stated that the potential water feature would be located near the 18<sup>th</sup> hole, which is located north of a stretch of houses. Mr. Brogan noted that one home is probably “within a couple hundred feet of the green,” but the two are separated by a significant amount of existing tree cover. Tr. Nov. 8 at 22. The current proposal for the 18<sup>th</sup> hole shows a bunker right next to the green. The potential water feature would be two small ponds instead of that bunker. The ponds would step down from the green at slightly lower elevations. They would play no role in stormwater management, and would serve a purely aesthetic function. Mr. Brogan explained that typically, golfers do not wade into a pond after a lost ball, because such ponds are at least six feet deep to help control algae. There might also be a small waterfall between the two ponds.

4. Ward Oberholtzer, wetlands expert. Tr. Nov. 6 at 151-215.

Mr. Oberholtzer was designated an expert in wetlands and stream restoration. His company, Land Studies, Inc., is an environmental consulting firm that deals with stream restoration, wetlands and environmental planning. Mr. Oberholtzer is a professional engineer in Maryland and has spend about 20 years working in water resource engineering, with 8 to 10 years spent predominantly on stream stability and restoration.

When Mr. Oberholtzer's firm was hired to do an assessment of the streams on the subject site, their first step was a visual assessment. They were surprised to find that the stream bed did not have the typical characteristics of a natural stream bed in this region (the Piedmont): a bedrock base and a gravel bottom. With the assistance of other specialists, they determined from trenches and extensive soil borings that Rock Run and its tributaries were mined during a gold mining period in the 19<sup>th</sup> and early 20<sup>th</sup> centuries. This activity resulted in removing the old bedrock and gravels that provided the base for the stream bed. There also may have been dams during the mining operation, resulting in thick layers of clay and sedimentation. In essence, Mr. Oberholtzer explained, the streams were largely relocated and their bottoms almost torn apart. They were filled in with wastes from the mining operation, which took away the soils in which vegetation could grow and protect the flood plains. Mr. Oberholtzer noted that in some places, there seems to be good soil covered by a few feet of poor soil. The majority of the flood plain seems to have been filled to a grade that is three to five feet higher than where it was prior to European settlement of the area, which is a significant cause of bank erosion. The net result is that vegetation does not have good soil to root in, and tends to fall over. Mr. Oberholtzer noted that the flooding problems were worsened by construction of the golf course, which added more fill to the flood plain and created active-play areas on it, so that when the water rose over the stream banks it had no where to go except the active play areas. In addition, a number of small bridges were built for the golf course that have smaller openings than the width of the channel upstream and downstream. This forces water to go over the bridge, onto the same elevation as the play area.

To solve these problems, Mr. Oberholtzer and his team propose to restore the streams so that the flood plain, the vegetation, the root zone, the stream bed, the stream base flow and the ground water are all on the same plane, with the root zone at about the same elevation as the ground water and the base flow. Achieving this would reduce the velocity of the water flowing through the stream, reduce the sheer stresses and create less erodible conditions. Mr. Oberholtzer explained that in sites where the stream valley has been filled with more recent sediments, his team will remove those sediments and incorporate a much better top soil. In some cases, bends in the stream are too tight to transport sediment, so they will make the radius a little smoother or larger, although they do put in bends and meanders. Sometimes they will cut the flood plain out and plant vegetation adjacent to it. With new materials to grow in, plant roots are able to extend down into the gravels or groundwater, which holds in the soil on the banks and across the whole flood plain. Tr. Nov. 6 at 166. Mr. Oberholtzer noted that velocity is a function of depth and slope, so when the flood plain is cut down, the flows are spread out at a much lower level, which reduces velocity. Removing sediment from the flood plain also makes the area of the flood plain available for water storage and conveyance.

Mr. Oberholtzer presented an exhibit with typical cross sections for the streams on the subject site, showing existing channel and flood plain conditions. His firm proposes to cut three feet of fill material out of the flood plain to create something more typical of the natural flood plain, with a very shallow channel depth and plants occupying the whole flood plain. In many places, the stream restoration plan involves moving the area of play out of the flood plain and creating wetlands instead. The material extracted from the flood plains would be used to build up the fairways. The plan also involves bringing in aggregate rock, with smaller gravel on top, to form a foundation for the stream bed. This is consistent with the stream restoration exhibit that Mr. Brogan used, Exhibit 72. In addition, some of the bridges would be replaced with bridges with longer spans.

Mr. Oberholtzer noted that in some places, it would not be possible to remove a significant amount of fill from the flood plain because of existing forest or golf course infrastructure. In those areas,

they would cut the bank back as much as possible to open up the flood plain and put in an aggregate of gravel for a stream bed foundation.

Mr. Oberholtzer anticipates that the stream restoration his firm proposes would widen the flood plain, reduce water surface elevation by a foot or more during two- to ten-year storms, and reduce water velocity during storms significantly. Tr. Nov. 6 at 172. He acknowledged that the practical effect would be to allow the stream system to better handle the frequent, smaller storms. Reducing the velocity of the water would also, among other things, slow the rate at which water is released to off-site areas.

Mr. Oberholtzer presented two exhibits, 82 and 83, showing where features of some of the existing golf course holes are located relative to the Rock Run channel. He pointed out bends in the stream just south of the clubhouse, near the tee for hole 12, where there is severe erosion and lateral migration, meaning that the stream is moving back and forth and a lot of trees have fallen. He noted that the proposed restoration plan would create a wetland buffer through the majority of the stream length and take out some of the very tight bends. It would also create as much wetland or flood plain as possible at a lower elevation, and plant vegetation throughout. Mr. Brogan interjected to explain that the black lines on these exhibits represent the line of play, which should keep golfers out of the newly created wetlands. Tr. Nov. 6 at 177.

Mr. Oberholtzer referred to Exhibit 84, which displays a photograph of existing conditions near hole number 6. He pointed out a stormwater management pond, the green, and a small bridge, noting that all of these features are pretty much along the same surface, so they all end up under water in a storm. The same exhibit depicts a representation of what this area would look like with the proposed restoration, which would remove a few feet of flood plain fill, increase the bridge span, and place the green farther from the creek and at a higher elevation. That would leave the whole bottom area available for flows leading into the pond. The restoration would include adding a vegetative buffer between the green and the stream area, and might include, as shown on Exhibit 84, putting in some boulders or other larger structures to maintain the beds or provide fish habitat. Tr. Nov. 6 at 183.

Mr. Oberholtzer reviewed Exhibit 85, which shows existing conditions and an artist's rendering of future conditions in another part of the golf course. He pointed out that the existing conditions photographs show a lot of erosion, and only about eight inches of muddy water in the channel. The restoration would again provide for more flood plain, wetlands and buffering, and move the green farther from the stream. In this depiction, there would be a retaining wall, taking advantage of a natural geologic formation where the bedrock extends out from the valley slope a little farther and the whole other side is forested.

Mr. Oberholtzer also reviewed photographs of a stream in Pennsylvania, with a drainage area very similar to Rock Run, where his firm carried out a stream restoration project. See Exhibit 78. That project also involved removing a significant amount of fill to create a more natural flood plain, in that case to provide better opportunities for the vegetation to remove nutrients from the water. He noted that stream restoration also enhances ground water recharge, because very little water can work its way through the cohesive clays in streams that are severely eroded. When that material is replaced with more porous organic materials, there is a lot more groundwater recharge.

To summarize the benefits of the proposed stream restoration, Mr. Oberholtzer stated that for the golf course, it would result in a lot less maintenance and flooding issues. *Id.* at 188. For downstream waterways and property owners, it should reduce sediment and nutrient loadings, as well as reducing water flows during storm events. The restoration project would also result in an increase in riparian and aquatic habitat, as it would create close to 12 acres of wetlands. This may result in some species increasing in numbers or returning to the area. In response to a later discussion about erosion problems downstream, Mr. Oberholtzer indicated that the improvements proposed at Avenel would only help a little bit with downstream erosion, because even with reduced flows, stream channels that are prone to erosion will continue to erode unless they are restored as Petitioner proposes to do at Avenel. Tr. Nov. 6 at 209-210.

In response to a question from a community member, Mr. Oberholtzer stated that the proposed stream restoration would leave the waterways with more bends and meanders than they have



now. He noted that Rock Run has some sharp curves, but only in two spots, and the tributaries are relatively straight. The restoration project would put in additional meander patterns.

5. Michael Cornelius, traffic engineer. Tr. Nov. 6 at 215-236.

Mr. Cornelius was designated an expert in traffic engineering and transportation planning. He testified that his firm prepared a traffic impact study related to the proposed modification according to the Planning Board's LATR standards. Per the LATR Guidelines and Technical Staff instructions, the study analyzed three intersections: the main entrance on Oaklyn Drive and one intersection each to the north and south, Falls Road and Persimmon Tree Road. Focusing on the typical weekday traffic impacts of the use, Mr. Cornelius stated that all three of the intersections studied are operating well below the congestion standard for the policy area, and would continue to do so with the additional trips created by the increased number of employees requested as part of the modification. Tr. Nov. 6 at 230-31. Adding in the effect of permitting caddies, Mr. Cornelius stated that based on the Petitioner's estimate that there could be as many as 40 caddies over a 12-hour period, traffic levels at the relevant intersections would still remain well under the congestion standard. *Id.* at 232-33.

The traffic study focused on the typical weekday traffic impacts of the use, rather than the impact of traffic associated with the PGA TOUR Event. In response to questions from the Hearing Examiner, Mr. Cornelius stated that based on his knowledge of the tournament set-up and breakdown process, the number of additional trips during those periods would be limited, consisting mostly of vendors coming to the site to drop things off, with trips spread out over time. Even during the busy week right before the tournament, when there is a high level of activity on the site, Mr. Cornelius noted that because the three intersections studied are operating well below the congestion standard for the area (the busiest of the three, at Falls Road, has a critical lane volume ("CLV") more than 400 lower than the congestion standard), the set-up activity would have to generate more than 400 CLVs to make a difference in the outcome of LATR analysis. He suggested that this would translate to about 700 to 800 additional vehicles in a one-hour period. In Mr. Cornelius's view, the traffic generated by set-up and take-down activities would not even approach those levels. *Id.* at 235.

The Hearing Examiner raised a concern about the lack of information in the record concerning the traffic impacts of the Petitioner's request to increase the permitted number of attendees at the PGA TOUR Event from 80,000 to 100,000 to 100,000 to 150,000. Transportation Staff at the MNCPPC did not analyze the impact of the proposed increase in spectators except to say, in an email responding to a question from the Hearing Examiner, that increasing the number of people coming to the site by 50 percent during the PGA TOUR Event would not have a detrimental effect on the nearby road system as long as the overall traffic flow was properly controlled by police officers and assisted by the traffic operations office. This conclusion was provided without any supporting analysis. Accordingly, the Hearing Examiner turned to the Petitioner for evidence that would support such a conclusion. Mr. Cornelius indicated that transportation during a PGA TOUR Event is handled by a transportation management plan. He confirmed that, as described by Petitioner's counsel, most spectators park at satellite parking lots and are brought to Avenel by bus. Mr. Cornelius suggested that increased numbers of spectators could result in more buses, or buses running for longer periods of time. He indicated that with data about the number of buses coming to the site in past years, his firm could model the number that would be expected with a 50 percent increase in spectators. Ultimately, however, the Petitioner decided to withdraw the request to increase the number of attendees, because it appears that no data about past bus usage is available. Moreover, in Avenel's 20-year history, the number of spectators has never reached 100,000, suggesting that there is no immediate need for an increase in the number permitted.

6. Dennis R. Ingram, Avenel superintendent. Tr. Nov. 8 at 27-91.

Mr. Ingram has been the golf course superintendent at Avenel for approximately six years, and has been an active golf course superintendent since 1977. He described the current Avenel golf course, which was built in 1984-85 using the latest technology available at the time. He noted that Avenel has seen only minor changes since then, and the turf grass, irrigation system and infrastructure have gotten old and worn out. The present turf grass, called Poaannus, is basically an invasive weed and requires tremendous amounts of water, fertilizer and pesticides. Moreover, it does not necessarily meet the criteria for a PGA TOUR facility in 2006.

Turning to the flooding problems, Mr. Ingram stated that in a minor rain, anything less than half an inch, most of the stormwater will stay within the banks. Anything upwards of three-quarters of an inch, however, will flood holes 5, 6, 10, 11, 12, and 13 to the point that it is a safety issue for members and destructive to the property. At the time of the hearing, there had been over an inch of rain in 24 hours. Mr. Ingram testified that at 8:00 on the morning of November 8, all of the stream banks were running at capacity. He noted that because the rain was spread over 10 to 12 hours, it had not yet caused significant flooding. When flooding occurs, Mr. Ingram stated, the golf course staff goes from normal golf course maintenance to flood control, then to repairing the course once the flood waters go down. Typically, it takes three to five days to put the golf course back together so members can play safely. Tr. Nov. 8 at 32. During this time, the course is closed. During his years at Avenel, Mr. Ingram estimates that the course has been closed due to flooding about six to seven times per year. *Id.* at 34.

Mr. Ingram described the requested changes to the hours of operations as trying to take advantage of daylight savings time for members and guests. Removing specific times by which golfers must be on the course would leave it to the discretion of the golf course operators to tell members and guests whether it is too late to start a game. Mr. Ingram noted that some players move through the course faster than others, so the management might be aware that certain members can start a game at 3:00 in the afternoon in November and be off the course before dark. He observed that there are no lights on the course, so people have to finish by dark for safety reasons. Mr. Ingram stated that the requested expansion of the hours of operation for meals is to respond to the wishes of members and guests by providing lunch and dinner on weekdays, and adding breakfast on weekends.

The Hearing Examiner noted that Petitioner's "Revised Summary of Approved and Proposed Special Exception Elements," Exhibit 23(d), describes the current operations as including private functions, such as weddings, in the evenings until midnight. The description of the proposed operations does not mention events ending at midnight. Petitioner's counsel agreed with the Hearing Examiner that nothing in the original Board Opinion approving this use, or the subsequent modifications, imposes a midnight ending time, but Avenel has used that as a self-imposed limit. Mr. Ingram stated that

Avenel plans to continue its practice of having the band stop at 11:30 and getting most people out by midnight. Tr. Nov. 8 at 38. He stated that because the clubhouse is not in close proximity to any homes, the golf course has never had any complaints about private functions. He noted, moreover, that when events take place outside, Avenel normally puts up a soft-sided tent, which muffles any noise from a band or DJ.

Mr. Ingram explained that Avenel can have 85 full-time employees with only 50 on site at one time because the golf course has long operating hours, and people work in shifts. Grounds maintenance staff tends to start very early in the morning, between 5:30 and 6:30 depending on the time of year and how many players are booked for a particular day. Maintenance staff leaves by mid-afternoon, and some of the food and beverage people arrive later in the day to take care of the lunch and dinner crowd.

Mr. Ingram explained the process of set-up and take-down for a PGA TOUR Event, as listed in "PGA TOUR Tournament Setup Requirements," Exhibit 59(c). He noted that unlike some PGA TOUR sites, Avenel has no permanent structures to host the event. As a result, the hospitality tents that the host organization (most recently Booz Allen) sells to sponsors change from year to year in size, location and the luxury items each tent may have. During the first week of the six-week set-up period, about five or six outside contractors would be on site, staking out locations for the hospitality tents. Tr. Nov. 8 at 43-44. At five weeks out, the process of staking out the hospitality tents continues, and materials for the tents start to arrive. During that week, Mr. Ingram explained, one or two electricians and telephone company representatives might also be on site to set up services for the tents. He estimated the number of contractors, five weeks out, at seven to ten people at any given time. At four weeks out, temporary office trailers start to arrive, to be used for a finance office, a security office, an office for PGA rules officials, and trailers for volunteers. Television and broadcast towers will also arrive during that period, dropped off by trailers. Construction would also start on an outside merchandise tent for the sponsor to sell hats, t-shirts, etc. These components would be set up with the same people already on site.

At three weeks out, Mr. Ingram stated, the level of intensity starts to pick up. Tr. Nov. 8 at 47. The hospitality tents are being erected, and food and beverage facilities start to arrive, normally consisting of two or three large, soft-sided tents that are inspected by the health department. The 1,500 volunteers start to come on site to pick up uniforms and credentials, although they are only on site briefly. Generators and HVAC units start arriving for the temporary structures. A facility is also set up to charge electric vehicles, which are the only kind permitted to operate during the tournament, for noise reasons.

Mr. Ingram testified that the intensity level increases at two weeks out. Scoreboards and standards showing the scoring start arrive from another PGA TOUR site. The sponsor suite arrives, a hard-sided, modular building that is lifted into place by a crane, set up between the 18<sup>th</sup> green and the clubhouse. Additional maintenance equipment is dropped off. At this point the contractor that is responsible for the hospitality suites will bring in a crew of about ten to start constructing the tents. There will be three or four tractor-trailer deliveries per day of courtesy cars that players and officials use during the tournament.

As Mr. Ingram put it, in the last week before the tournament “the circus starts.” Nov. 8 at 49. Contestants start to arrive to practice. The county bus service stages 10 to 12 buses on site, ready for use during the tournament. The courtesy vehicles are cleaned and detailed. The health and building inspectors make daily visits. Tournament staff arrives, usually about seven officials. Some of the contestants arrive with their own mobile accommodations, which Mr. Ingram described as extremely luxurious RVs (recreational vehicles), which are parked on site. In past years, there have been about 12 to 16 RVs. Sometimes the RVs park in an asphalt area near the maintenance facility, or at Congressional Country Club. Mr. Ingram is not aware of any complaints having been made about the RVs.

Mr. Ingram indicated that most of the hospitality tents are set up between hole 16 and the entrance drive. The sponsor suite goes between the 18<sup>th</sup> green and the clubhouse. There are also bleachers set up near the 18<sup>th</sup> green, and a “pavilion club” where people can get refreshments or, in the even of rain, watch the event on television. Mr. Ingram described the tournament itself, noting that

attendance runs from 10,000 to 15,000 Monday through Wednesday to as many as 28,000 at the peak, Saturday afternoon.

Turning to traffic management during the tournament, Mr. Ingram stated that pursuant to Avenel's agreement with WSSC, about 65 to 70 acres of land are available for parking, for about ten days in and around the week of the tournament. Tr. Nov. 8 at 61. Based on past events at Avenel and other PGA TOUR sites, Mr. Ingram reports, about 125 to 130 cars will fit per acre. These parking areas are grassy fields, some of which stay high and dry and some of which do not, so in bad weather some of the fields cannot be used. Parking passes are sold by the host organization, along with tickets to the event. The cost of the parking passes is related to their location, and the passes are color-coded. Volunteers at the site regulate the use of parking passes. Depending on the color of your pass, you might come in along the main entrance drive and head north and west, or you might enter Oaklyn Drive off of Falls Road and enter the site via WSSC property north of the golf course. Petitioner's counsel pointed out that these two entrance points are the same ones identified as the main access points for construction vehicles.

After the tournament, Mr. Ingram stated, the first three to five days are quite hectic. Tr. Nov. 8 at 65. After that, the number of people and level of activity on the site are similar to the first three weeks of the set-up.

In response to a question from the Hearing Examiner, Mr. Ingram stated that in the past, the tournament set-up and take-down have sometimes taken longer than the time periods permitted under the current terms of the special exception, but mostly because of rain. He testified that TPC at Avenel has made every effort to stay within the periods originally approved for set-up and take-down. Tr. Nov. 8 at 68-69.

### ***B. Community Participation***

1. Charles Doran, Brickyard Road Citizens' Association. Tr. Nov. 6 at 196-212.

Mr. Doran is president of the Brickyard Road Citizen's Association. He brought to the hearing a golf ball that he picked up in an open area south of Avenel, in Rock Run Park. He observed that he followed Rock Run downstream, and in this open area he found dozens of golf balls that had washed

down from Avenel. He saw that as a symbol of the fact that everything that's done on the golf course affects the park downstream from it, so citizens who prize the park want to be sure that no additional damage is done. Tr. Nov. 6 at 196.

Mr. Doran emphasized that while the changes at Avenel might make some improvements, they are not going to solve the problem because there is a huge amount of water coming from farther upstream, which should be handled differently. He would like to see a coalition of homeowners and Avenel created to persuade the County to take steps to improve stormwater management in the area. Tr. Nov. 6 at 205. The Hearing Examiner explained that the Board's authority in this proceeding is limited to approving or denying the requested modification of the special exception. The Hearing Examiner suggested that if the present modification petition is approved and a Community Liaison Council is established, Mr. Doran should raise this issue at the first meeting. Petitioner's counsel stated that TPC at Avenel would certainly be willing to be part of a neighborhood coalition to address stormwater management issues. Tr. Nov. 6 at 210. He also indicated that the stream restoration plan proposed for Avenel is being considered as a potential pilot project for a bigger solution. He noted that Montgomery County does not currently have a protocol for this type of stream restoration, and that if this project is successful, it could be the beginning of a bigger solution.

2. Emil Beran. Tr. Nov. 6 at 238-42.

Mr. Beran resides on Turnberry Drive in the Avenel Subdivision. He raised a concern, both at the hearing and in written submissions, about the preliminary forest conservation plan that was approved by the Planning Board. That plan provides for reforestation in a location that would block Mr. Beran's view of the golf course. Mr. Beran chose his home in part for the golf course view, so he strongly objects to having that view blocked by trees.

Representatives of the Petitioner met with Mr. Beran prior to the hearing and verbally agreed to change the reforestation plan to remove the trees proposed behind his home and his neighbors' homes. This is consistent with representations made during the hearing, indicating that if the modification is approved, the Petitioner will propose to the Planning Board an alternative reforestation plan that

preserves golf course views by putting new trees in other locations. Mr. Beran sought guidance as to how he and his neighbors should protect their interests going forward. The Hearing Examiner explained that because of timing concerns, the Petitioner is not planning to seek Planning Board approval for a revised preliminary forest conservation plan before the case goes to the Board of Appeals. As a result, the Board of Appeals will have to consider both forest conservation alternatives. Ultimately, the final word on forest conservation goes to the Planning Board, which must approve the plan. The Hearing Examiner recommended that if the modification is approved, Mr. Beran should discuss his concerns with Technical Staff during the next few months and make sure that when the Planning Board considers the proposal to revise the reforestation plan, it is clear that the changes are being made at the community's request.

3. John Dix. Tr. Nov. 8 at 70-96.

Mr. Dix resides at 9722 Pleasant Gate Lane in the Avenel Community, having purchased his home about five months before the hearing. He believes that there are stormwater management problems in the Rock Run watershed that should be reviewed in a comprehensive fashion. Mr. Dix sees an opportunity for Avenel to use stormwater that is collected at Avenel Park, just northwest of the golf course, for irrigation. This, he contends, would avoid taxing the local Wissahickon Aquifer by removing water for irrigation. Mr. Dix reports that Avenel has a permit to pump up to 60,000 gallons of water per day from the aquifer, which translates to 21 million gallons a year. Rather than deplete the aquifer, Mr. Dix suggests that stormwater run-off be used as a resource.

Mr. Dix also commented that the area being used for parking is some of the last remaining meadowland in Potomac. If it were managed as meadowland, he contends, it might be a place for bird and insects and other creatures. He questions why cars are being parked on grassland when there are paved surfaces all around that can be used for parking. Mr. Dix grew up in Potomac, and remembers Avenel when there were lots of birds in the area. Petitioner's counsel noted that the area used for parking is actually part of an equestrian facility owned by WSSC, where they graze horses.



### ***C. Rebuttal***

In response to Mr. Dix's testimony, Mr. Ingram declared that TPC at Avenel is not seeking any change or increase in the current permit that allows the use of ground water for irrigation during dry periods. Tr. Nov. 8 at 78. He further testified that Avenel's primary source of water for irrigation is an on-site irrigation lake located adjacent to holes 13 and 14, just east of the clubhouse. *Id.* at 78-80; 90-91. That irrigation lake is actually a stormwater management pond with an irrigation pumping station. Tr. Nov. 8 at 80, 90. Avenel uses water from this pond intermittently, during the period from April to November, if rainfall is below normal. *Id.* at 78-79, 90. If rainfall is normal, there is no need to irrigate. Typically, he finds that the golf course uses 45,000 to 50,000 gallons per day from the irrigation lake, for a week or two at a time during dry periods. *Id.*

Mr. Ingram stated that Avenel has a permit to withdraw water from Rock Run, which is fed entirely by stormwater, if needed to recharge the irrigation lake. *Id.* at 80. Avenel also has a permit, as Mr. Dix noted, to pump groundwater from the Wissahecan Aquifer if needed during periods of drought. *Id.* at 90-91. In the more than seven years that he has worked at Avenel, Mr. Ingram reported, no water has been withdrawn from either Rock Run or the aquifer; rainfall and the irrigation lake have been sufficient, even in very dry periods. Tr. Nov. 8 at 89.

Mr. Ingram noted that stormwater collected at Avenel Park, which Mr. Dix mentioned as a possible source of irrigation water for the golf course, runs onto the golf course northeast of hole 3, then goes underground for about 100 feet through a culvert, and empties into an upper tributary of Rock Run southwest of hole 6. *Id.* at 88. At the south end of hole 6, the water is dumped into a stormwater management pond that is used as an aesthetic feature for holes 6 and 7. *Id.* Eventually, the water from the pond is released into a Rock Run tributary. *Id.*

## **IV. CONCLUSIONS**

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific and general. The special exception is also evaluated in a site-specific context because there may be locations where it is not

appropriate. Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (see Code §59-G-1.21(a)), the Hearing Examiner concludes that the proposed modification, with the conditions recommended at the end of this report, would satisfy all of the specific and general requirements for the use.

### ***A. Standard for Evaluation***

The standard for evaluation prescribed in Code § 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.21. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a golf course and country club. Characteristics of the proposed modification that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed modification that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff did not identify the inherent characteristics of a golf course and country club. Based on the record in this case and familiarity with other, similar uses in the County, the Hearing

Examiner considers the following to be inherent characteristics of a golf course and country club: a golf course, other recreational facilities, structures of various sizes for use as a clubhouse, restrooms, storage areas, administrative offices and maintenance facilities, and parking facilities large enough to accommodate members and their guests.

In this case, Technical Staff did not identify any unusual site conditions or non-inherent characteristics of the use related to the proposed modification, noting that the annual PGA TOUR Event has been part of the special exception since its inception. The Hearing Examiner agrees that most elements of the proposed modification are consistent with the inherent physical and operational characteristics of a golf course and country club. There is nothing unusual about the physical layout of the golf course, the other amenities offered on site, or the proposed hours of operation. There is no evidence in the record concerning the number of employees that are typically associated with a golf course, but the 85 employees requested in the modification is not surprising figure, given the size of the site and the dining and social events that take place at the clubhouse. The Hearing Examiner finds, however, that the elements of the modification connected with the annual PGA TOUR Event should be considered non-inherent operational characteristics. There is no evidence in the record to suggest that hosting a major professional golf tournament is an operational characteristic necessarily associated with a golf course and country club, and the Hearing Examiner is aware, through other special exception and rezoning cases, of golf clubs in the County that do not host a professional tournament sanctioned by the PGA TOUR.

The elements of the proposed modification connected with the PGA TOUR Event are an increase in the number of days the tournament may run, an increase in the number of volunteers on site during the tournament, and a substantial increase in the period of time permitted for preparation and clean-up. The PGA TOUR Event has been an approved part of this special exception since its inception. The evidence suggests, moreover, that lengthening the time period for the tournament would either conform the terms of the special exception to the existing practice, or lengthen the number of days during which professional golfers may play “pro-am” games with amateurs, or practice playing the Avenel course. Mr. Ingram’s testimony indicated that the key days are Thursday and Friday, when all players are involved

in the elimination rounds, and Saturday and Sunday, when the field of players has been reduced and the number of spectators swells. There is no evidence, apart from an unsupported allegation in one letter of opposition, that allowing the tournament to begin on Monday rather than Wednesday would have any meaningful adverse effect beyond those that are necessarily part of hosting such a large event.

As noted in Part II.D.4 above, there is no evidence that increasing the number of volunteers on site from 1,200 to 1,500 would have any adverse impact on the surrounding neighborhood. In light of the thousands of people on the site during the tournament, an additional 300 would have no noticeable impact, except perhaps to increase the level of organization and improve conditions for spectators.

The most significant element of the modification related to the PGA TOUR Event is lengthening the preparation and clean-up periods. The Petitioner seeks approval for six weeks of preparation time and three weeks of clean-up, and has presented detailed testimony and written evidence explaining what activities would take place on site during these time periods. The Petitioner's unrefuted evidence establishes that during the first three weeks of the six-week preparation period there would be no more than 15 people on site, in addition to the usual 50 employees, and between 10 and 20 deliveries taking place during the course of each week. The Hearing Examiner considers this a moderate level of activity, with no significant neighborhood impacts likely. The level of intensity in the preparation activities would increase each week during the last three weeks before the tournament, reaching a level of activity that likely would become noticeable in the community at some point during those three weeks. Even then, Petitioner estimates only about 30 additional people on the site and 40 deliveries over the course of a week. Moreover, the written evidence specifies that there is no weekend work during the first four weeks of the six-week preparation period, which limits potential impacts on the neighborhood. The Petitioner's unrefuted evidence establishes a similar, more compressed pattern during the tournament clean-up. The pace of activity would be quite hectic for the first three to five days after the tournament, then would drop down to about the same number of people and level of activity as the first three weeks of the preparation period.

Technical Staff recommended limiting preparation for the tournament to three weeks and clean-up to one week. See Staff Report at 3. The Planning Board recommended six weeks for preparation, "with primary event operations setup activities limited to three (3) weeks prior to an event," and three weeks for clean-up. Ex. 35 at 4. Neither the Planning Board nor Technical Staff provided any discussion to explain the basis for their recommendations on this point. As discussed in Part II.D.4, the Hearing Examiner assumes that the intent of both Technical Staff and the Planning Board was to limit the number of days with a higher level of activity on the site, in order to limit neighborhood impacts. Based on the testimony, however, it is not clear that limiting the length of the preparation and clean-up periods would reduce adverse impacts on the neighborhood. The Petitioner contends that a shorter preparation period would compress the same amount of activity into a shorter number of days, resulting in potentially greater impacts during those few days than if the activities were spread out. Absent any rationale from the Planning Board or Technical Staff to support imposing shorter time periods, the Hearing Examiner recommends approving the periods the Petitioner has requested, with certain parameters, based on the testimony and written evidence, recommended as conditions of approval. These parameters include limiting preparation and clean-up activities to the hours when construction activities are permitted under county regulations, limiting preparation activities during the first four weeks of the preparation period to weekdays, and specifying that during the first three weeks of preparation, the number of additional workers on site shall be limited to 15 at any one time, and the number of deliveries associated with the tournament shall be limited to 20 per week. With these conditions, the Hearing Examiner finds that the proposed modification related to the annual PGA TOUR Event would have no material adverse effects.

The elements of the modification related to golf course renovation and stream restoration would have no discernible adverse impacts, other than temporary impacts during the construction period. The evidence suggests that the renovation and restoration work would be very beneficial to environmental conditions on site and the enjoyment of the golf club by its members and visitors, and that the only downstream, off-site effects would be beneficial.

Renovation and expansion of the clubhouse would have no discernible effect on the neighborhood, given that the clubhouse is in the middle of the site and not very visible from surrounding homes. To the extent that it is visible, the evidence suggests that the clubhouse renovation would result in a more attractive building.

The proposed improvements to the entry drive also would have no discernible adverse effects. The widening of the drive would take up some additional WSSC land, but would not encroach on any existing land uses or bring the impacts of the road closer to residences. The only identifiable effect of the bus turnaround would be to facilitate the flow of traffic during the PGA TOUR Event, which could only be positive for the surrounding community. Placing a roof on the wash pad at the maintenance facility would be unlikely to have any noticeable effect, in light of substantial buffering around the maintenance facility.

The proposed changes in the hours of operation represent modest increases in the days and hours available for golfing, which are unlikely to have any noticeable adverse effect. The most significant change in the hours would be allowing golfers to use the course on Sundays during the winter months. There is no evidence to suggest that this change would have any material impact on the surrounding community, as it would merely allow a low-intensity sport to be played seven-days-a-week all year round, rather than limiting it for a few months each year.

The Petitioner proposes minor changes in the operation of the dining room, which is already authorized to serve breakfast, lunch and dinner daily, and to host private functions every night of the year. Petitioner proposes to specify times for meal service, with the dining room open from 30 minutes before the first tee time to 9:00 p.m. April to October, except for Mondays, which would be reserved for private golf outings. Hours would be slightly shorter on winter weekends, and 11:00 a.m. to 5:00 p.m. on weekdays, November to March. Mr. Ingram testified that he is not aware of any complaints from neighbors about activity at the clubhouse. The requested dining room hours are consistent with the operation of the golf course as a whole, and given the location of the clubhouse, would be unlikely to cause adverse effects.

The proposed increase in the number of employees would result in only a modest increase in the level of activity on site, with only ten more employees on site at one time. The traffic impact, as discussed in Part II.G. above, would also be minor, given the absence of congestion in the immediate vicinity.

Finally, the request to permit caddies has no identifiable adverse effects. The only discernible effect would be to speed up the pace of play, allow players to choose the health benefits of walking, and reduce the impact on the course of driving golf carts.

For all of the reasons noted above, the Hearing Examiner concludes that with the conditions recommended at the close of this report, the inherent and non-inherent adverse effects of the subject use, with the proposed modification, are not sufficient to warrant denial of the petition.

### ***B. Specific Standards***

The specific standards for a golf course and country club are found in Code § 59-G-2.24. The Technical Staff report and the Petitioner's written evidence and testimony provide sufficient evidence that with the recommended conditions, the proposed modification would be consistent with these specific standards, as outlined below.

#### **Sec. 59-G-2.24. Golf course and country club.**

A golf course or country club must adhere to the following standards and requirements:

- (a) The provision of food, refreshments, and entertainment for club or organization members and their guests may be allowed in connection with such use, provided the availability of such services is not reasonably expected to draw an excessive amount of traffic through local residential streets.

**Conclusion:** The proposed modification involves only modest changes in the operation of the dining room, which are unlikely to draw appreciably more traffic to the site than the current operation. The addition of a private dining area for professional golfers, for example, would be unlikely to draw anyone who would not already be on site for the PGA TOUR Event. Establishing new hours for the dining room might spread the dining traffic around differently, but there is no evidence that it would increase the number of trips.

(b) All standards of the applicable zones must apply except:

(1) Maximum building coverage - 3%

Conclusion: Technical Staff reports that the existing building coverage is approximately 0.32 percent of the site. With the proposed addition to the clubhouse, that ratio would increase to about 0.39 percent.

(2) Minimum setback for a main building - 50 feet

Conclusion: No change is proposed in the location of the clubhouse, which is set back more than 400 feet from the nearest property line.

(3) The Board may waive the provisions of Sec. 59-C-1.326(a) regarding the location of accessory buildings.

Conclusion: No change is proposed in the location of any accessory buildings, nor are any new buildings proposed.

(4) The site must have a minimum of 200 feet of frontage on a road of arterial or higher classification in a residential zone.

Conclusion: The proposed modification would not affect site frontage.

(c) All outdoor lighting must be located, shielded, landscaped or otherwise buffered so that no direct light intrudes into any residential area.

Conclusion: No changes in outdoor lighting are proposed except around the clubhouse, which is sufficiently buffered by landscaping and distance so that no direct light would intrude into any residential area. There is no lighting on the golf course itself.

(d) All major outdoor activity areas, such as tennis courts, swimming pools, and golf course playing surfaces must be set back at least 100 feet from property lines adjoining a one-family residential use. The Board may reduce this setback where it finds that landscaping, screening, fencing or other measures can mitigate the adverse effects on the adjoining residential use.

Conclusion: The Avenel golf course and the Avenel Subdivision were planned and developed jointly, and views of the golf course were (and are) considered an amenity for residents of the subdivision. The proposed modification would result in bringing the golf course playing surfaces closer to some homes and placing them farther from others. The Petitioner prepared a detailed exhibit with a



graphic depiction of these changes (see Exhibits 59(d) and 66), and has summarized the changes as described below:

- 15 residential lots that are not currently within 100 feet of a golf playing surface would become within 100 feet;
- 20 residential lots that currently are within 100 feet of a golf playing surface would become closer to that surface;
- 23 residential lots that currently are within 100 feet of a golf playing surface would move beyond 100 feet from that playing surface; and
- 11 lots that currently are within 100 feet of a golf playing surface would move farther from the playing surface, but remain within 100 feet.

The golf course and the subdivision were designed to be mutually compatible, and that design was accepted by the Board of Appeals and the Planning Board. In view of this, and the evidence showing that the net effect of the modification would be eight fewer residential lots within 100 feet of the field of play, the Hearing Examiner concludes that the modification would satisfy this requirement.

- (e) Any golf course established by special exception before May 6, 2002 is a conforming use and may be modified in accordance with the special exception standards in effect at the time the modification is filed.

**Conclusion:** The subject golf course was established by special exception well before 2002, and is a conforming use that may be modified in accordance with the current standards.

### ***C. General Standards***

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioner's written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

#### **Sec. 59-G-1.21. General conditions:**

- (a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:
- (1) Is a permissible special exception in the zone.

**Conclusion:** A golf course and country club is a permitted use in the RE-2C/TDR Zone.

- (2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: With the recommended conditions of approval, the proposed modification would comply with the standards and requirements set forth for the use in Code §59-G-2.24, as detailed in Part IV.B. above.

- (3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

Conclusion: The evidence supports the conclusion that the proposed modification would be consistent with the *2002 Potomac Subregion Master Plan*, which identifies the subject property as a private or public recreation site and recommends continued RE-2C/TDR zoning. In addition, the proposed stream restoration would contribute to the Master Plan's goal of increasing environmental sustainability in the planning area, and would be consistent with its specific recommendations for special exceptions, as discussed in Part II.C. above.

- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.

Conclusion: With the recommended conditions of approval, the proposed modification would be in harmony with the general character of the neighborhood considering the cited factors. The modification would have no effect on population density; the design, scale and bulk of the proposed clubhouse renovation and expansion would not be readily visible from nearby residential areas, given the 400-foot distance to the nearest property line; the intensity and character of activity on the site would change little in day-to-day operations and, as discussed in Part IV.A. above, would have no significant

adverse effects related to the annual PGA TOUR Event beyond those that are inherent in hosting that event, which has been an approved activity since the start of this special exception; none of the proposed changes would have a significant adverse effect on traffic or parking; and no similar uses have been identified in the general neighborhood.

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that with the recommended conditions of approval, the proposed modification would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site. The golf course renovation and stream restoration would have only positive effects, as would the clubhouse renovation and improvements to the entry drive. The day-to-day operational changes are very minor, with few noticeable impacts. The most significant operational change would be lengthening the amount of time available for tournament preparation and clean-up. As discussed in Part IV.A., above, there is no substantial, probative evidence to support a conclusion that the periods of time the Petitioner requests would result in adverse effects beyond those inherent in the tournament process, which is an approved element of this special exception.

- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that with the recommended conditions, the proposed modification would cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site.

- (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

Conclusion: The proposed modification would not, of course, increase the number of special exception uses in the area. The evidence supports the conclusion that the proposed modification would not increase the intensity or scope of special exception uses sufficiently to affect the area adversely or alter its predominantly residential nature. Technical Staff reports that there are no other special exceptions in the immediate area.

- (8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that with the recommended conditions, the proposed modification would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

Conclusion: The Hearing Examiner accepts Technical Staff's conclusion that the subject property would continue to be served by adequate public facilities with the proposed modification.

- (i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of granting the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.

Conclusion: Subdivision approval would not be required, although the Petitioner would require Planning Board approval of a revised site plan. As discussed in Part II.G. above, the preponderance of the evidence establishes that the proposed modification would not result in any adverse impacts on the local road network, per LATR review. Policy Area Transportation Review is not longer required in the Growth Policy.

- (2) With regard to findings relating to public roads, the Board . . . must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

Conclusion: The evidence supports a conclusion that the proposed modification, with the recommended conditions of approval, would have no detrimental effect on the safety of vehicular or pedestrian traffic, but rather would improve the safety and efficiency of on-site circulation.

- (b) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department which approves or licenses the project.

Conclusion: No finding necessary.

- (c) The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.

Conclusion: The record substantiates a finding that the Petitioner has met the burden of proof and persuasion.

## V. RECOMMENDATIONS

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition No. S-914-C, which seeks to modify an existing special exception for a private golf club, the Avenel Golf Club, located at 10000 Oaklyn Drive in Potomac, Maryland, to permit complete renovation of the golf course, including redesigning some of the holes to make them more competitive, replacing all of the turf, and carrying out stream restoration work to control flooding problems; a complete interior and exterior renovation of the clubhouse, with a modest expansion of its size; minor changes in the hours of operation; and more time for the preparation, operation and clean-up of the annual PGA TOUR Event, be **granted** with the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, including those required to be submitted by Condition 3 below, and by the representations of counsel identified in this report.

2. All terms and conditions of the approved special exception shall remain in full force and effect, except as specifically amended by this modification.
3. Within 15 days of the Board of Appeal's action on this application, the Petitioner shall submit to the Board the following exhibits, corrected to show an accurate boundary line in the area of the maintenance facility, with each exhibit marked "CORRECTED REPLACEMENT EXHIBIT," with its current exhibit number:
  - a. Ex. 65, Existing Golf Course Layout
  - b. Ex. 67, Proposed Layout
  - c. Ex. 83, Stream and Floodplain Restoration Plan
  - d. Ex. 68, Forest Conservation
  - e. Ex. 75, Temporary Construction Access and Staging Areas
4. The operation of the special exception shall be limited by the parameters set forth in the column entitled "Proposed" on the chart attached as Appendix A to this report, which is identified as Exhibit 23(d) and repeated on pages 11-14 of this report, except that where a condition imposed in these numbered paragraphs differs from the chart, the condition shall govern.
5. The special exception shall be limited to a total of 50 employees on site at one time, except during the last three weeks of the preparation period for the annual PGA TOUR Event, the first week of the clean-up period, and the PGA TOUR Event itself.
6. On-site activities related to preparation for the annual PGA TOUR Event may begin no sooner than six weeks before the event is to begin, and may take place only during the hours during which Montgomery County regulations permit construction activities to take place. During the first four weeks of the preparation period, preparation activities may take place only on weekdays. During the first three weeks of the preparation period, the number of workers on site at any one time in addition to the 50 full-time

employees of the golf course shall be limited to 15, and the number of deliveries associated with the PGA TOUR Event shall be limited to no more than 20 per week.

7. In conjunction with its request for a site plan modification approval from the Montgomery County Planning Board, the Petitioner shall request approval for a revised forest conservation plan, as shown on page 41 above and identified as Exhibit 68 (to be submitted in corrected form per Condition 3 above), which does not impinge on golf course views that are currently enjoyed by nearby residences.
8. The proposed golf course renovation may be carried out with either of the alternatives for hole 13 shown on page 23 of this report, as determined with input from Technical Staff during site plan review.
9. The Applicant shall submit a Final Forest Conservation Plan (FCP) prepared by a qualified professional to the Environmental Planning Staff of the M-NCPPC prior to site plan approval. This plan must demonstrate full compliance with the requirements of Forest Conservation Law, section 22-A-12.
  - a. Final forest conservation plan will include, but is not limited to, the following items:
    - i. Permanent markers (such as fences or signs) that clearly identify the boundaries of forest retention, forest planting, and environmental buffers, particularly in the vicinity of residences, and heavy-use areas.
    - ii. Plan to control invasive plants, deer and wildfowl predation, to minimize their adverse impacts on forest planting areas, stream buffers, and floodplain reconstruction/wetland creation areas.
    - iii. Tree protection plan for individual trees 24 inches and greater in diameter at breast height that are located outside a forest stand.
  - b. Record plat to reflect a Category I easement over all areas of forest retention, and forest planting. With respect to environmental buffers that are not included in active play areas, specific areas to be included in any easement area and specific easement category to be determined at time of site plan.
10. Approval of Board of Appeals Petition No. S-914-C, TPC at Avenel, with the following conditions:
  - a. Prior to sediment control plan approval, obtain a letter of intent to issue Nontidal Wetlands and Waterways Permit from the Maryland Department of Environment (MDE) for waterway construction and wetland disturbance.

- b. Final stream restoration, floodplain reconstruction and environmental remediation plan shall include, but is not limited to, the following elements:\
  - i. Provide existing and build-out stream discharges, and design discharge and shear stresses for stream improvements, particularly along the mainstem of Rock Run to ensure that stream restoration design is an improvement over current conditions.
  - ii. Longitudinal profile before and after construction, and affects of proposed work on overall floodplain elevation and channel slope.
  - iii. Provide existing and proposed sediment transport capacity and demonstrate improved downstream conditions.
  - iv. Construction sequence and construction management plan that includes presence of design professional during key construction stages, and completion and submission of as-built surveys to be done section by section.
  - v. Integrated pest management plan to promote water quality, water conservation, and chemical use reduction.
  - vi. Maximization of the use of sod to quickly re-establish stable ground cover adjacent to stream restoration and renovation work, per June 16th PGA Tour correspondence.
- c. Prior to site plan approval, develop and obtain M-NCPPC, DEP and DPS staff approval of an inspection and maintenance plan for stream channel restoration practices and floodplain reconstruction areas, including regular field inspection schedule as well as inspections following significant storm events. Inspection and maintenance plan will cover minimum of three years post-construction, and will be extended to cover the first two-year storm, ten-year storm, fifty-year storm and 100-year storm to occur post-construction period. Plan shall include measures to implement basic repairs, and to remediate damage to parkland during construction and three-years post construction, such as from a demonstrable on-site sediment control or stream channel failure within the three-year post-construction period, applicant or their assigns shall re-design and reconstruct the project.
- d. Prior to site plan approval, develop and obtain M-NCPPC, DEP and DPS staff approval of a pre-and post-construction stream monitoring plan that is consistent with monitoring protocols for watershed restoration projects established by Montgomery County Department of Environmental Protection. The monitoring plan will establish a monitoring schedule appropriate to the type of monitoring to be conducted, and include a quality assurance/quality control plan. Monitoring will be conducted prior to commencement of construction, and at one-year, three-years and five-years post-construction. Types of monitoring to be conducted may include: permanent benchmark monitoring of stream channel cross-sections; quantitative and/or qualitative habitat monitoring; BEHI; benthic macroinvertebrate community samples; herpetofauna community at wetland creation or enhancement site; fish community samples; wetland vegetation monitoring; streambank vegetation monitoring; water quality parameters.
- e. Site plan and final grading plan to delineate environmental buffer areas including establishment of a variable width stream buffer area throughout the course that incorporates forested buffers in areas that do not interfere with play,



and minimally managed low-growing shrubs, native grasses, and taller turf grasses where trees would interfere with play.

f. Compliance with the conditions of approval of the MCDPS stormwater management concept approval letter dated July 3, 2006, prior to site plan approval.

g. Obtain DPS 100-YR Floodplain Study approval prior to site plan approval.

11. Petitioner shall establish a Community Liaison Council, whose members shall consist of no more than four representatives of the golf course, including those persons most familiar with the stream restoration work; the People's Counsel as *ex officio* member; and one or two representative of each of the homeowner's associations that have been involved in this case: Avenel Community Association, Inc.; Brickyard Road Citizen's Association and Mazza Woods Citizen's Association. The Community Liaison Council shall meet at least once before the site plan modification is presented to the Planning Board, at least once before each of the monitoring events listed in Condition 9 above (i.e., prior to commencement of construction and at one-year, three-year and five-years post-construction) takes place, to give the community representatives an opportunity for input into how the monitoring is conducted, and at least once immediately following compilation of the results of monitoring, to give the community representatives an opportunity to ask questions of the golf course's experts concerning the monitoring results and to have further input in the process. The independent monitor hired by the golf course pursuant to Condition 9 above shall be asked to attend each of the Community Liaison Council meetings except the first, when monitoring will not yet be imminent. If any community representative on the Community Liaison Council wishes to obtain the services of an expert in stream restoration or a related field, such expert shall be given the opportunity to review relevant documentation and participate in the Community Liaison Council meetings.

12. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits or use-and-occupancy permit, necessary to

implement the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and facility comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: January 5, 2007

Respectfully submitted,

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Françoise M. Carrier  
Hearing Examiner

**APPENDIX A****TPC AT AVENEL (the "SPECIAL EXCEPTION PROPERTY")****REVISED SUMMARY OF APPROVED<sup>1</sup> AND PROPOSED SPECIAL EXCEPTION ELEMENTS**

	<b>Approved</b>	<b>Proposed</b>
<b><i>SITE &amp; FACILITIES</i></b>		
<b>Property:</b>	TPC at Avenel 10000 Oaklyn Drive Potomac, Maryland 20854	No change
<b>Acreage:</b>	260 +/-	No change
<b>Facilities:</b>	<ul style="list-style-type: none"> <li>• 18-hole championship golf course</li> <li>• Golf driving range with teaching facility</li> <li>• 30,000 square-foot clubhouse, including pro shop, locker rooms, administrative offices and dining area</li> <li>• 8,000 square-foot maintenance building</li> <li>• Four (4) 200- square foot shelters/ rest areas</li> <li>• 400 square-foot snack stand</li> </ul>	<ul style="list-style-type: none"> <li>• Proposed golf course/ environmental enhancements and improvements</li> <li>• Proposed 3,600 square-foot addition to clubhouse</li> <li>• Proposed installation of a roof on the existing wash pad portion of the maintenance structure</li> <li>• Proposed entry drive enhancements</li> </ul>
<b>Golf course features:</b>	<ul style="list-style-type: none"> <li>• Several low-level stream crossings (able to pass 2-year flood underneath)</li> </ul>	<ul style="list-style-type: none"> <li>• Raise stream crossing to allow 10 year flood to pass underneath</li> </ul>

AaA

<sup>1</sup> Per original special exception approval (S-914) and subsequent modifications

<b>GENERAL OPERATIONS</b>		
<b>Days/ Hours of Operation:</b>	Monday thru Sunday	Monday thru Sunday
<b>Golf course:</b>	<p>Weekdays: 8 a.m. to sundown Weekends: 7 a.m. to sundown</p> <p>Golf course open 6 days per week in the winter</p>	<p><u>April 1- October 31</u></p> <p>Weekdays: 7:30 a.m. to sundown Weekends: 7 a.m. to sundown</p> <p><u>March &amp; November</u></p> <p>All days: 8 a.m. to sundown</p> <p><u>December 1- February 29</u></p> <p>All days: 10 a.m. to sundown</p> <p>Maintenance activities to begin prior to first tee time</p>
<b>Clubhouse:</b>	<p>Breakfast, lunch and dinner service daily</p> <p>Year round: Special private functions, i.e. Weddings, bar mitzvahs, parties, in the evenings until 12:00 midnight</p>	<p><u>April 1<sup>st</sup>- October 31<sup>st</sup></u> Tuesday- Sunday: Breakfast, lunch and dinner served from 30 minutes prior to first tee-time until 9:00 p.m. Monday: Private outings, 8:00 a.m. to 8:00 p.m.</p> <p><u>November 1<sup>st</sup>- March 31<sup>st</sup></u> Weekdays: Lunch and dinner served from 11:00 a.m. to 5:00 p.m. (8:00 p.m. on Friday) Weekends: Breakfast, lunch and dinner served from 30 minutes prior to first tee-time until 8:00 p.m.</p>
<b>Total # of Employees:</b>	<p>50 full-time:</p> <ul style="list-style-type: none"> <li>• Approx. 15 maintenance</li> </ul>	<p>85 full-time employees:</p> <ul style="list-style-type: none"> <li>• Approx. 30 maintenance</li> </ul>

	<p>persons</p> <ul style="list-style-type: none"> <li>• Approx. 6 pro shop employees</li> <li>• Approx. 2 locker room attendants</li> <li>• Approx. 15 restaurant employees</li> <li>• Approx. 7 driving range/ golf cart persons</li> <li>• Approx. 5 general administrative persons</li> </ul> <p>No more than 40 persons working at any given time</p>	<p>persons</p> <p>No more than 50 persons working at any given time</p>
<b>Total # of Rounds Per Day</b>	220 maximum	No change to number of rounds, but add ability of players to walk and/or use caddies
<b>Total # of Parking Spaces Provided:</b>	<p>250 spaces at the clubhouse</p> <p>20 spaces at the maintenance facility</p>	<p>271 provided at the clubhouse</p> <p><del>Add 18 parking spaces at the proposed tournament office building</del></p>
<b>Maintenance Equipment:</b>	<ul style="list-style-type: none"> <li>• 75 electric carts</li> <li>• Mowers, sod cutter, small tractors, utility vehicles</li> </ul>	No change

DELETED  
PER  
APPLICANT'S  
COUNSEL

**TOURNAMENT  
OPERATIONS**

<b>Tournament Schedule:</b>	<ul style="list-style-type: none"> <li>Typically during the first week of June</li> <li>Preparation time: 1-2 weeks</li> <li>Tournament: 5 days (Wednesday thru Sunday)</li> <li>Cleanup time: 1-2 weeks</li> </ul>	<ul style="list-style-type: none"> <li>Flexibility to have tournament anytime from April-October</li> <li>Preparation time: 6 weeks</li> <li>Tournament: 7 days (Monday thru Sunday)</li> <li>Cleanup/ breakdown time: 3 <del>6</del> weeks</li> </ul> <p>PER APPLICANT'S COUNSEL</p>
<b>Tournament Name/ Sponsor</b>	Kemper Open tournament	PGA TOUR Event, to allow tournament name and sponsor to remain flexible
<b>Tournament Facilities:</b>	In addition to the facilities listed above: <ul style="list-style-type: none"> <li>Television pads and towers</li> <li>Hospitality tents</li> <li>Food service tents</li> <li>Service trailers</li> </ul>	No change
<b>Tournament Attendance:</b>	Ranges from 80,000 to 100,000	<del>100,000-150,000</del> No CHANGE REQUESTED PER APPLICANT'S COUNSEL
<b>Volunteers:</b>	Approx. 1,200	Approx. 1,500
<b>Parking:</b>	<ul style="list-style-type: none"> <li>3,750 cars parked on adjoining property owned by WSSC</li> <li>VIP and overflow parking across Oaklyn Drive</li> <li>Satellite parking at Westfield Shopping Center with shuttle bus service</li> </ul>	No change